

STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

*relating to*

Statutory Forms for Durable  
Powers of Attorney

September 1983

CALIFORNIA LAW REVISION COMMISSION  
4000 Middlefield Road, Room D-2  
Palo Alto, California 94306

#149

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September 23, 1983

**To: THE HONORABLE GEORGE DEUKMEJIAN**  
*Governor of California* and  
**THE LEGISLATURE OF CALIFORNIA**

This recommendation proposes enactment of statutory forms for durable powers of attorney for property matters and for health care decisions. It is also recommended that the duration of a directive to physicians under the Natural Death Act be increased from five to seven years to conform to the duration of a durable power of attorney for health care. Technical amendments to the new durable power of attorney for health care statute are also recommended.

This recommendation is submitted pursuant to 1979 Cal. Stats. res. ch. 19.

Respectfully submitted,

**DAVID ROSENBERG**  
*Chairperson*



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# RECOMMENDATION

*relating to*

## STATUTORY FORMS FOR DURABLE POWERS OF ATTORNEY

### BACKGROUND

In 1981, the Uniform Durable Power of Attorney Act was enacted in California upon recommendation of the California Law Revision Commission.<sup>1</sup> In 1983, provisions governing a Durable Power of Attorney for Health Care were enacted, also upon Commission recommendation.<sup>2</sup> Use of these durable powers of attorney avoids the need for a court supervised conservatorship. In addition, the durable power of attorney for health care permits an individual to determine the course of his or her medical care by appointing a trusted relative or friend to make health care decisions instead of leaving health care decisions to a judge.

This recommendation proposes enactment of statutory short forms for durable powers of attorney for property matters and for durable powers of attorney for health care. Enactment of these statutory forms will not supplant detailed lawyer-drafted powers of attorney in situations where persons have the desire and means for specially drafted documents.<sup>3</sup> Nor will the statutory form prevent the use of other printed forms.

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<sup>1</sup> 1981 Cal. Stats. ch. 511, adding Civil Code §§ 2400-2407. See *Recommendation Relating to Uniform Durable Power of Attorney Act*, 15 Cal. L. Revision Comm'n Reports 351 (1980). For additional legislative history, see 16 Cal. L. Revision Comm'n Reports 25, 43-46 (1982).

<sup>2</sup> 1983 Cal. Stats. ch. 1204, adding Civil Code §§ 2430-2443. See *Recommendation Relating to Durable Power of Attorney for Health Care Decisions*, 17 Cal. L. Revision Comm'n Reports 101 (1984).

<sup>3</sup> If the principal desires to restrict the persons who may petition for a court review of actions of the attorney-in-fact, the advice of a lawyer is required and the power of attorney must include the lawyer's approval. See Civil Code § 2421. The recommended statutory forms do not provide for this option, but the forms could easily be adapted by a lawyer to limit court review of the actions of the attorney-in-fact.

## PROPERTY MATTERS

A durable power of attorney to cover all aspects of property matters may be a lengthy document. To avoid this, New York enacted a statute that authorizes use of a "statutory short form power of attorney."<sup>4</sup> This statutory form gives the attorney-in-fact authority to act with respect to 13 categories of transactions or matters,<sup>5</sup> such as "real estate transactions," "bond, share and commodity transactions," and "insurance transactions." The New York statute contains "constructional sections" that spell out in considerable detail the precise powers the attorney-in-fact has if granted one or more of the general categories of authority listed in the 13 categories.<sup>6</sup> For example, if the attorney-in-fact is given authority with respect to "real estate transactions" in the statutory short form, the details of the authority granted are specified in a more than 750 word statutory statement.<sup>7</sup> And most of the sections that spell out the details of the authority granted with respect to other categories of authority are more extensive.<sup>8</sup>

The Commission recommends that California enact a statutory short form durable power of attorney drawn from the New York statute. This form can be understood and used by a person without the necessity of having a document prepared by a lawyer.<sup>9</sup> At the same time, the proposed legislation will be useful to lawyers, for the statute will provide a series of detailed statements of authority with respect to particular property matters that can be incorporated by reference in a lawyer-drafted document. These detailed statutory statements provide some assurance that nothing will be overlooked in granting the attorney-in-fact all the authority necessary with respect to a particular category of transaction.

A person can grant another a durable power of attorney using the statutory short form and avoid the need for a

<sup>4</sup> N.Y. Gen. Oblig. Law §§ 5-1501 to 5-1503 (McKinney 1978 & Supp. 1982-83).

<sup>5</sup> N.Y. Gen. Oblig. Law § 5-1501 (McKinney Supp. 1982-83).

<sup>6</sup> N.Y. Gen. Oblig. Law §§ 5-1502A to 5-1502L (McKinney 1978).

<sup>7</sup> N.Y. Gen. Oblig. Law § 5-1502A (McKinney 1978).

<sup>8</sup> See N.Y. Gen. Oblig. Law §§ 5-1502C (bond, share and commodity transactions), 5-1502D (banking transactions), 5-1502E (business operating transactions), 5-1502F (insurance transactions), 5-1502G (estate transactions) (McKinney 1978).

<sup>9</sup> The recommended legislation closely follows the New York statute which has been used in that state since 1948. See 1948 New York Stats. ch. 422, superseded by 1963 New York Stats. ch. 576.

conservatorship of the estate should the person later become unable to manage his or her property and financial affairs. A person can also use a statutory short form power of attorney to grant to another the power to act with respect to only one or several specific matters, such as tax matters or bond, share, and commodity transactions. In addition, the statutory short form itself will be a brief, notarized document<sup>10</sup> suitable for recording where recording is necessary or desirable.

### HEALTH CARE

The new 1983 statute<sup>11</sup> relating to a durable power of attorney for health care is complex. The new statute contains restrictions, protections, notice requirements, and witnessing requirements that must be kept in mind when preparing a durable power of attorney for health care.<sup>12</sup> The complexity of the new statute makes it unlikely that the average person could prepare a durable power of attorney for health care that would satisfy statutory requirements and ensure that the person's desires concerning health care are respected.

The Commission recommends that California enact a statutory short form durable power of attorney for health care. This form could be used by those who cannot afford a lawyer or who prefer not to use a lawyer. Use of the form will guard against the power of attorney being held ineffective because of a failure to comply with the complex statutory requirements. Lawyers may find the statutory form adequate for use by clients in some cases and useful

<sup>10</sup> Like the New York law (N.Y. Gen. Oblig. Law § 5-1501), the recommended statutory short form power of attorney is valid only if its execution is acknowledged before a notary public.

<sup>11</sup> 1983 Cal. Stats. ch. 1204 (adding Civil Code §§ 2430-2443).

<sup>12</sup> See, e.g., Civil Code §§ 2432(a) (2) (durable power must contain date of its execution and be properly witnessed), 2432(c) (limitation on appointing a conservator as attorney-in-fact when principal is conservatee under Lanterman-Petris-Short Act), 2432(d) (persons not qualified as witness), 2432(e) (qualifications of at least one witness), 2432(f) (ombudsman required as witness if principal patient in skilled nursing facility), 2433 (notice required in printed form), 2434 (authority of attorney-in-fact absent limitations in power of attorney), 2435 (certain types of placement or treatment not authorized), 2436 (right to inspect and disclose medical records absent limitations in power of attorney), 2436.5 (duration of power absent limitation in power of attorney), 2440 (effect of principal's objection to providing or withholding or withdrawing health care).

in preparing individually drafted powers of attorney for other clients.<sup>13</sup>

The Commission also recommends a clarification in the newly enacted durable power of attorney for health care statute. Civil Code Section 2437, relating to revocation of authority granted by a durable power of attorney for health care, should be amended to make clear that a person is not subject to civil or criminal liability for acting in reliance upon the power of attorney unless the person has actual knowledge that the authority granted by the durable power has been revoked.<sup>14</sup> In addition, Civil Code Sections 2421 and 2433 should be amended so that the lawyer's certificates provided for in those sections and the lawyer's certificate provided for in the proposed legislation will use the same language. This will avoid the need for two differently phrased certificates in a case where a certificate is needed to satisfy the requirements of more than one section.

The Commission further recommends that the period of duration of a directive to physicians under the Natural Death Act<sup>15</sup> be increased from five to seven years to conform to the period of duration of a durable power of attorney for health care.<sup>16</sup> A person is likely to execute a document under both of these statutes as a part of a comprehensive program designed to cover the possibility of the person becoming incapacitated. Having both documents expire at the same time will facilitate later review of both documents at the same time shortly before they expire.

## RECOMMENDED LEGISLATION

The Commission's recommendation would be effectuated by enactment of the following measures:

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<sup>13</sup> See *supra* note 3.

<sup>14</sup> The Natural Death Act contains a comparable provision. See Health & Safety Code § 7189(b).

<sup>15</sup> Health & Safety Code §§ 7185-7195.

<sup>16</sup> Civil Code § 2436.5 (durable power of attorney for health care). To conform the Natural Death Act, Sections 7188 and 7189.5 of the Health and Safety Code will require amendment.

## STATUTORY SHORT FORM POWER OF ATTORNEY

An act to add Chapter 3 (commencing with Section 2450) to Title 9 of Part 4 of Division 3 of the Civil Code, relating to powers of attorney.

*The people of the State of California do enact as follows:*

Civil Code §§ 2450-2473 (added)

**SECTION 1.** Chapter 3 (commencing with Section 2450) is added to Title 9 of Part 4 of Division 3 of the Civil Code, to read:

### CHAPTER 3. STATUTORY SHORT FORM POWER OF ATTORNEY

#### Article 1. General Provisions

§ 2450. Statutory short form of general power of attorney

**2450.** The use of the following form in the creation of a power of attorney is lawful, and when used, the power of attorney shall be construed in accordance with the provisions of this chapter and, if the power of attorney is a durable power of attorney, shall be subject to the provisions of Article 3 (commencing with Section 2400) of Chapter 2:

#### STATUTORY SHORT FORM POWER OF ATTORNEY

(California Civil Code Section 2450)

**WARNING. IT MAY BE IN YOUR BEST INTEREST TO CONSULT WITH A CALIFORNIA LAWYER BECAUSE THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE DEFINED IN SECTIONS 2460 TO 2473, INCLUSIVE, OF THE CALIFORNIA CIVIL CODE.**

**THE POWERS GRANTED BY THIS DOCUMENT WILL EXIST FOR AN INDEFINITE PERIOD OF TIME UNLESS YOU LIMIT THEIR DURATION IN THIS**

**DOCUMENT. THESE POWERS WILL CONTINUE TO EXIST NOTWITHSTANDING YOUR SUBSEQUENT DISABILITY OR INCAPACITY UNLESS YOU INDICATE OTHERWISE IN THIS DOCUMENT.**

**THIS DOCUMENT MUST BE NOTARIZED TO BE VALID.**

**YOU HAVE THE RIGHT TO REVOKE OR TERMINATE THIS POWER OF ATTORNEY.**

**YOU ARE NOT REQUIRED TO USE THIS FORM; YOU MAY USE A DIFFERENT POWER OF ATTORNEY IF THAT IS DESIRED BY THE PARTIES CONCERNED.**

**IF THERE IS ANYTHING ABOUT THIS FORM THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.**

**1. DESIGNATION OF AGENT.**

I, \_\_\_\_\_

(Insert your name and address)

do hereby appoint \_\_\_\_\_

(Insert name and address of your agent, or each agent if you want to designate more than one)

as my attorney(s)-in-fact (agent) to act for me and in my name as authorized in this document.

**2. CREATION OF DURABLE POWER OF ATTORNEY.** By this document I intend to create a general power of attorney under Sections 2450 to 2473, inclusive, of the California Civil Code. Subject to any limitations in this document, this power of attorney is a durable power of attorney and shall not be affected by my subsequent incapacity.

(If you want this power of attorney to terminate automatically when you lack capacity, you must so state in paragraph 4 ("Special Provisions and Limitations") below.)

**3. STATEMENT OF AUTHORITY GRANTED.** Subject to any limitations in this document, I hereby grant to my agent(s) full power and authority to act for me and in my name, in any way which I myself could act, if I were personally present and able to act, with respect to the following matters as each of them is defined in

Chapter 3 (commencing with Section 2450) of Title 9 of Part 4 of Division 3 of the California Civil Code to the extent that I am permitted by law to act through an agent:

- (1) Real estate transactions.
- (2) Tangible personal property transactions.
- (3) Bond, share, and commodity transactions.
- (4) Banking transactions.
- (5) Business operating transactions.
- (6) Insurance transactions.
- (7) Retirement plan transactions.
- (8) Estate transactions.
- (9) Claims and litigation.
- (10) Tax matters.
- (11) Personal relationships and affairs.
- (12) Benefits from military service.
- (13) Records, reports, and statements.
- (14) Full and unqualified authority to my agent(s) to delegate any or all of the foregoing powers to any person or persons whom my agent(s) shall select.
- (15) All other matters.

(Strike out any one or more of the items above to which you do NOT desire to give your agent authority. Such elimination of any one or more of items (1) to (14), inclusive, automatically constitutes an elimination of item (15). TO STRIKE OUT AN ITEM, YOU MUST DRAW A LINE THROUGH THE TEXT OF THAT ITEM.)

**4. SPECIAL PROVISIONS AND LIMITATIONS.** In exercising the authority under this power of attorney, my agent(s) is subject to the following special provisions and limitations:

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(Special provisions and limitations may be included in the statutory short form power of attorney only if they conform to the requirements of Section 2455 of the California Civil Code.)

**5. EXERCISE OF POWER OF ATTORNEY WHERE MORE THAN ONE AGENT DESIGNATED.** If I have designated more than one agent, the agents are to act

\_\_\_\_\_ .  
(If you designate more than one agent and wish each agent alone to be able to exercise this power, insert in this blank the word "severally." Failure to make an insertion or the insertion of the word "jointly" will require that the agents act jointly.)

**6. NOMINATION OF CONSERVATOR OF ESTATE.**

(A conservator of the estate may be appointed for you if a court decides that one should be appointed. The conservator is responsible for the management of your financial affairs and your property. You are not required to nominate a conservator but you may do so. The court will appoint the person you nominate unless that would be contrary to your best interests. You may, but are not required to, nominate as your conservator the same person you named in paragraph 1 as your agent. You may nominate a person as your conservator by completing the space below.)

If a conservator of the estate is to be appointed for me, I nominate the following person to serve as conservator of the estate \_\_\_\_\_

\_\_\_\_\_  
(Insert name and address of person nominated as conservator of the estate)

**DATE AND SIGNATURE OF PRINCIPAL**

I sign my name to this Statutory Short Form Power of Attorney on

\_\_\_\_\_ at \_\_\_\_\_, \_\_\_\_\_  
(Date) (City) (State)

\_\_\_\_\_  
(You sign here)

(THIS POWER OF ATTORNEY WILL NOT BE VALID UNLESS IT IS ACKNOWLEDGED BEFORE A NOTARY PUBLIC IN CALIFORNIA)

## CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

State of California }  
County of \_\_\_\_\_ } ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_,  
before me, \_\_\_\_\_,

(Insert name of notary public)

personally appeared \_\_\_\_\_,

(Insert name of principal)

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed it. I declare under penalty of perjury that the person whose name is subscribed to this instrument appears to be of sound mind and under no duress, fraud, or undue influence.

### NOTARY SEAL

\_\_\_\_\_  
(Signature of Notary Public)

**Comment.** Section 2450 is drawn in part from a portion of Section 5-1501 of the New York General Obligations Law. The "Warning" statement is drawn in part from the New York provision, in part from language that appears in Section 2400, and in part from Section 6240 (California Statutory Will). In the short-form power of attorney, the "warning" set out in Section 2450 replaces the one set out in Section 2400. See also Section 2451.

#### § 2451. Form must contain "warning" or lawyer's certificate

**2451.** (a) Notwithstanding Section 2400, except as provided in subdivision (b), a statutory short form power of attorney, to be valid, must contain, in not less than 10-point bold-face type or a reasonable equivalent thereof, the "Warning" which is printed in capital letters at the beginning of Section 2450.

(b) Subdivision (a) does not apply if the statutory short form power of attorney contains a certificate signed by the principal's lawyer stating in substance: "I am a lawyer authorized to practice law in the state where this power of attorney was executed, and the principal was my client at the time when this power of attorney was executed. I have advised my client concerning his or her rights in connection with this power of attorney and the applicable law and the consequences of signing or not signing this power of attorney, and my client, after being so advised, has executed this power of attorney."

**Comment.** Section 2451 makes invalid a statutory short form power of attorney that does not contain the warning or, in lieu of the warning, a lawyer's certificate. Subdivision (a) is comparable to a portion of Section 5-1501 of the New York General Obligations Law. The "warning" set out in Section 2450 must be used in the short form instead of the warning set out in Section 2400.

#### § 2452. Formal requirements

**2452.** A statutory short form power of attorney is valid only if it is signed by the principal, it is acknowledged by the principal before a notary public at any place within this state, and the notary public executes the certificate in the form set out in Section 2450.

**Comment.** Section 2452 is comparable to a portion of Section 5-1501 of the New York General Obligations Law. To be valid a statutory short form power of attorney must satisfy the requirements of both Section 2451 and Section 2452.

#### § 2453. Agents must act jointly unless otherwise specified

**2453.** If more than one agent is designated by the principal in a statutory short form power of attorney, the agents in exercising the powers conferred must act jointly unless the principal specifically provides in the statutory short form power of attorney that they are to act severally.

**Comment.** Section 2453 is the same in substance as a portion of Section 5-1501 of the New York General Obligations Law.

§ 2454. Requirements for power of attorney to be a statutory short form power of attorney

2454. (a) Subject to subdivisions (b) and (c), a power of attorney is a "statutory short form power of attorney," as this phrase is used in this chapter, if it meets both of the following requirements:

(1) It meets the requirements of Sections 2451 and 2452.

(2) It contains the exact wording of paragraph 3 of the form set out in Section 2450.

(b) One or more of items (1) to (14) may be stricken out by the principal in paragraph 3 of the form set out in Section 2450, in which case the items so stricken out and also item (15) shall be deemed eliminated.

(c) A statutory short form power of attorney may contain modifications or additions of the types described in Section 2455.

Comment. Section 2454 is the same in substance as a portion of Section 5-1501 of the New York General Obligations Law.

§ 2455. Modifications of the statutory short form power of attorney

2455. A power of attorney which satisfies the requirements of Section 2454 is not prevented from being a "statutory short form power of attorney," as this phrase is used in this chapter, by the fact that it also contains additional language which does any one or more of the following:

(a) Eliminates from the power of attorney one or more of the powers enumerated in one or more of the constructional sections of this chapter with respect to an item in paragraph 3 of the statutory short form power of attorney not eliminated by the principal.

(b) Supplements one or more of the powers enumerated in one or more of the constructional sections in this chapter with respect to an item in paragraph 3 of the statutory short form power of attorney not eliminated by the principal, by specifically listing additional powers of the agent.

(c) Makes the power of attorney not a durable power of attorney or limits the duration of the power of attorney

or prescribes when the power of attorney becomes effective.

(d) Makes some additional provision which is not inconsistent with the other provisions of the statutory short form power of attorney.

Comment. Section 2455 is the same in substance as Section 5-1503 of the New York General Obligations Law.

§ 2456. Right to use other power of attorney

2456. Nothing in this chapter affects or limits the use of any other form for a power of attorney.

Comment. Section 2456 is the same in substance as a portion of Section 5-1501 of the New York General Obligations Law.

Article 2. Construction of Grants of General Authority With Respect to Particular Matters

§ 2460. Real estate transactions

2460. (a) In a statutory short form power of attorney, the language conferring general authority with respect to "real estate transactions" shall be construed to mean that the principal authorizes the agent to do all of the following:

(1) Accept as a gift or as security for a loan, reject, demand, buy, lease, receive, or otherwise acquire, either ownership or possession of any interest in real property.

(2) Sell, exchange, convey with or without covenants, quit-claim, release, surrender, mortgage, encumber, partition or consent to the partitioning of, grant options concerning, lease, sublet, or otherwise dispose of, any interest in real property.

(3) Change the form of title of any interest in real property.

(4) Create, modify, or revoke a trust concerning any interest in real property.

(5) Release in whole or in part, assign the whole or a part of, satisfy in whole or in part, or enforce by action, proceeding, or otherwise, any mortgage, encumbrance, lien, or other claim which exists, or is claimed to exist, in

favor of the principal with respect to any interest in real property.

(6) Do any act of management or conservation with respect to any interest in real property owned or claimed to be owned by the principal, including by way of illustration, but not of restriction, the power to do the following:

(A) Insure against any casualty, liability, or loss.

(B) Eject, remove, or relieve tenants and other persons from the property, or obtain or regain possession of, or protect the interest in the property, by action, proceeding, or otherwise.

(C) Pay, compromise, or contest taxes or assessments, and apply for refunds in connection therewith.

(D) Purchase supplies.

(E) Hire assistance or labor.

(F) Make repairs or alterations in the real property or structures or other improvements on it.

(7) Maintain, protect, preserve, utilize in any way, subdivide, develop, modify, alter, replace, remove, demolish, erect, or install structures or other improvements upon, any real property in which the principal has, or claims to have, any interest.

(8) Develop or dedicate real property in which the principal has, or claims to have, any interest to public use and dedicate easements to public use, with or without consideration.

(9) Demand, receive, and obtain by action, proceeding, or otherwise, any money or other thing of value to which the principal is, may become, or may claim to be entitled as the proceeds of an interest in real property or of one or more of the transactions enumerated in this section; conserve, invest, disburse, or utilize anything so received for purposes enumerated in this section and to reimburse the agent for any expenditures properly made in the execution of the powers conferred on the agent by the statutory short form power of attorney.

(10) Participate in any reorganization with respect to real property and receive and hold any shares of stock or

instrument of similar character received in accordance with the plan of reorganization, and act with respect to them, including by way of illustration, but not of restriction, the power to sell or otherwise dispose of the shares, or any of them; exercise or sell any option, conversion, or similar right with respect to them; and vote on them in person or by the granting of a proxy.

(11) Agree and contract, in any manner, with any person, and on any terms, which the agent may select, for the accomplishment of any of the purposes enumerated in this section; and perform, rescind, reform, release, or modify any such agreement or contract or any other similar agreement or contract made by or on behalf of the principal.

(12) Execute, acknowledge, seal, and deliver any deed, revocation, declaration, or modification of trust, mortgage, lease, notice, check, or other instrument the agent believes useful for the accomplishment of any of the purposes enumerated in this section.

(13) Prosecute, defend, submit to arbitration, settle, or propose or accept a compromise with respect to, any claim existing in favor of or against the principal based on or involving any real property transaction or intervene in any action or proceeding relating to it.

(14) Hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant, when the agent believes it necessary or desirable for the proper execution of any of the powers described in this section or for the keeping of needed records.

(15) In general, and in addition to all the specific acts enumerated in this section, do any other act which the principal can do through an agent with respect to any interest in real property.

(b) All powers described in this section are exercisable equally with respect to any interest in real property owned by the principal at the time of the giving of the power of attorney or thereafter acquired, whether located in this state or elsewhere.

**Comment.** Section 2460 is the same in substance as Section 5-1502A of the New York General Obligations Law. The broader phrase "interest in real property" has been substituted for the

phrase "estate or interest in land" which appears in the New York section and other editorial revisions have been made in the New York section.

§ 2461. Tangible personal property transactions

2461. (a) In a statutory short form power of attorney, the language conferring general authority with respect to "tangible personal property transactions" shall be construed to mean that the principal authorizes the agent to do all of the following:

(1) Accept as a gift or as security for a loan, reject, demand, buy, lease, receive, or otherwise acquire, either ownership or possession of any interest in tangible personal property.

(2) Sell, exchange, convey with or without covenants, release, surrender, mortgage, encumber, pledge, hypothecate, create a security interest in, pawn, partition or consent to the partitioning of, grant options concerning, lease, sublet, or otherwise dispose of, any interest in tangible personal property.

(3) Change the form of title to any interest in tangible personal property.

(4) Create, modify, or revoke a trust concerning any interest in tangible personal property.

(5) Release in whole or in part, assign the whole or a part of, satisfy in whole or in part, or enforce by action, proceeding, or otherwise, any mortgage, encumbrance, lien, or other claim which exists, or is claimed to exist, in favor of the principal with respect to any interest in tangible personal property.

(6) Do any act of management or conservation with respect to any interest in tangible personal property owned or claimed to be owned by the principal, including by way of illustration, but not of restriction, the power to do the following:

(A) Insure against any casualty, liability, or loss.

(B) Obtain or regain possession of, or protect the interest in the property, by action, proceeding, or otherwise.

(C) Pay, compromise, or contest taxes or assessments, and apply for refunds in connection therewith.

(D) Hire assistance or labor.

(E) Move from place to place, store for hire or on a gratuitous bailment, use, alter, or make repairs or alterations of, the property.

(7) Demand, receive, and obtain by action, proceeding, or otherwise, any money or other thing of value to which the principal is, may become, or may claim to be entitled as the proceeds of an interest in tangible personal property or of one or more of the transactions enumerated in this section; conserve, invest, disburse, or utilize anything so received for purposes enumerated in this section and to reimburse the agent for any expenditures properly made in the execution of the powers conferred on the agent by the statutory short form power of attorney.

(8) Agree and contract, in any manner, with any person, and on any terms, which the agent may select, for the accomplishment of any of the purposes enumerated in this section; and perform, rescind, reform, release, or modify any such agreement or contract or any other similar agreement or contract made by or on behalf of the principal.

(9) Execute, acknowledge, seal, and deliver any conveyance, revocation, declaration, or modification of trust, mortgage, lease, notice, check, or other instrument the agent believes useful for the accomplishment of any of the purposes enumerated in this section.

(10) Prosecute, defend, submit to arbitration, settle, or propose or accept a compromise with respect to, any claim existing in favor of or against the principal based on or involving any tangible personal property transaction or intervene in any action or proceeding relating to it.

(11) Hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant, when the agent believes it necessary or desirable for the proper execution of any of the powers described in this section or for the keeping of needed records.

(12) In general, and in addition to all the specific acts enumerated in this section, do any other act which the principal can do through an agent with respect to any interest in tangible personal property.

(b) All powers described in this section are exercisable equally with respect to any interest in any tangible personal property owned by the principal at the time of the giving of the power of attorney or thereafter acquired, whether located in this state or elsewhere.

Comment. Section 2461 is the same in substance as Section 5-1502B of the New York General Obligations Law. The modern phrase "tangible personal property" has been substituted for the phrase "chattel or goods" which appears in the New York section.

§ 2462. Bond, share, and commodity transactions

2462. (a) In a statutory short form power of attorney, the language conferring general authority with respect to "bond, share, and commodity transactions" shall be construed to mean that the principal authorizes the agent to do all of the following:

(1) Accept as a gift or as security for a loan, reject, demand, buy, receive, or otherwise to acquire ownership or possession of, any bond, share, or other instrument of similar character, commodity interest, or any instrument with respect to a commodity, together with the interest, dividends, proceeds, or other distributions connected with it.

(2) Sell (including short sales), exchange, transfer with or without a guaranty, release, surrender, hypothecate, pledge, grant options concerning, loan, trade in, or otherwise dispose of any bond, share, or other instrument of similar character, commodity interest, or any instrument with respect to a commodity.

(3) Create, modify, or revoke a trust concerning any bond, share, or other instrument of similar character, commodity interest, or any instrument with respect to a commodity.

(4) Release in whole or in part, assign the whole or a part of, satisfy in whole or in part, or enforce by action, proceeding, or otherwise, any pledge, encumbrance, lien, or other claim as to any bond, share, or other instrument of similar character, commodity interest, or any interest with respect to a commodity, when the pledge,

encumbrance, lien, or other claim is owned, or claimed to be owned, by the principal.

(5) Do any act of management or conservation with respect to any bond, share, or other instrument of similar character, commodity interest, or any instrument with respect to a commodity, owned or claimed to be owned by the principal or in which the principal has or claims to have an interest, including by way of illustration, but not of restriction, the power to do the following:

(A) Insure against any casualty, liability, or loss.

(B) Obtain or regain possession of, or protect the interest in it by action, proceeding, or otherwise.

(C) Pay, compromise, or contest taxes or assessments, and apply for refunds in connection therewith.

(D) Consent to and participate in any reorganization, recapitalization, liquidation, merger, consolidation, sale, or lease, or other change in or revival of a corporation or other association, or in the financial structure of any corporation or other association, or in the priorities, voting rights, or other special rights with respect to it.

(E) Become a depositor with any protective, reorganization, or similar committee of the bond, share, or other instrument of similar character, commodity interest, or any instrument with respect to a commodity.

(F) Make any payments reasonably incident to subparagraphs (A) to (E), inclusive.

(G) Exercise or sell any option, conversion, or similar right.

(H) Vote in person or by the granting of a proxy, with or without the power of substitution, either discretionary, general, or otherwise, for the accomplishment of any of the purposes enumerated in this section.

(6) Carry in the name of a nominee selected by the agent any evidence of the ownership of any bond, share, or other instrument of similar character, commodity interest, or instrument with respect to a commodity.

(7) Employ, in any way believed desirable by the agent, any bond, share, or other instrument of similar character, commodity interest, or any instrument with respect to a commodity, in which the principal has or

claims to have any interest, for the protection or continued operation of any speculative or margin transaction personally begun or personally guaranteed, in whole or in part, by the principal.

(8) Demand, receive, and obtain by action, proceeding, or otherwise, any money or other thing of value to which the principal is, may become, or may claim to be entitled as the proceeds of any interest in a bond, share, or other instrument of similar character, commodity interest, or any instrument with respect to a commodity or of one or more of the transactions enumerated in this section; conserve, invest, disburse, or utilize anything so received for purposes enumerated in this section and to reimburse the agent for any expenditures properly made in the execution of the powers conferred on the agent by the statutory short form power of attorney.

(9) Agree and contract, in any manner, with any broker or other person, and on any terms, which the agent may select, for the accomplishment of any of the purposes enumerated in this section; and perform, rescind, reform, release, or modify any such agreement or contract or any other similar agreement made by or on behalf of the principal.

(10) Execute, acknowledge, seal, and deliver any consent, authorization, assignment, revocation, declaration, or modification of trust, notice, waiver of notice, check, or other instrument the agent believes useful for the accomplishment of any of the purposes enumerated in this section.

(11) Execute, acknowledge, and file any report or certificate required by law or governmental regulation.

(12) Prosecute, defend, submit to arbitration, settle, or propose or accept a compromise with respect to, any claim existing in favor of or against the principal based on or involving any bond, share, or commodity transaction or intervene in any action or proceeding relating to it.

(13) Hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant, when the agent believes it necessary or desirable for the proper

execution of any of the powers described in this section or for the keeping of needed records.

(14) In general, and in addition to all the specific acts enumerated in this section, do any other act which the principal can do through an agent with respect to any interest in any bond, share, or other instrument of similar character, commodity, or instrument with respect to a commodity.

(b) All powers described in this section are exercisable equally with respect to any interest in any bond, share, or other instrument of similar character, commodity, or instrument with respect to a commodity, owned by the principal at the time of the giving of the power of attorney or thereafter acquired, whether located in this state or elsewhere.

Comment. Section 2462 is the same in substance as Section 5-1502C of the New York General Obligations Law.

#### § 2463. Banking transactions

2463. (a) In a statutory short form power of attorney, the language conferring general authority with respect to "banking transactions" shall be construed to mean that the principal authorizes the agent to do all of the following:

(1) Continue, modify, and terminate any account (including a deposit account, security account, certificate of deposit, money market account, margin account, common trust fund, mutual fund, treasury bill or note, and any other type of cash fund, cash equivalent, or security) or other banking arrangement made by or on behalf of the principal before the creation of the agency.

(2) Open either in the name of the agent alone, or in the name of the principal alone, or in both their names jointly, or otherwise, an account of any type in any financial institution selected by the agent; and make any contracts for the procuring of other services made available by any financial institution the agent believes desirable.

(3) Make, sign, and deliver checks or drafts for any purpose; and withdraw by check, order, or otherwise any

funds or property of the principal deposited with, or left in the custody of, any financial institution, wherever located, either before or after the creation of the agency.

(4) Prepare from time to time financial statements concerning the assets and liabilities or income and expenses of the principal and deliver statements so prepared to any financial institution or other person the agent believes is reasonably entitled to them.

(5) Receive statements, vouchers, notices, or other documents from any financial institution, and act with respect to them.

(6) Enter, establish, close, maintain, and have access to any safe deposit box held in the name of the principal alone or jointly with another person, whether or not the institution renting the box has its own form of power of attorney for those purposes, and remove all or any of the contents of the box.

(7) Borrow money by bank overdraft or by promissory note of the principal given for such period and at such interest rate as the agent shall select; give such security out of the assets of the principal as the agent believes desirable or necessary for the borrowing; pay, renew, or extend the time of payment of any note so given or given by or on behalf of the principal; and procure for the principal a loan from any financial institution by any other procedure made available by the financial institution.

(8) Make, assign, endorse, discount, guarantee, and negotiate, for any and all purposes, all promissory notes, bills of exchange, checks, drafts, or other negotiable or nonnegotiable paper of the principal or payable to the principal or to the order of the principal; receive the cash or other proceeds of any of those transactions; and accept any bill of exchange or draft drawn by any person upon the principal and pay it when due.

(9) Receive for the principal and deal in and deal with any trust receipt, warehouse receipt, or other negotiable or nonnegotiable instrument in which the principal has or claims to have an interest.

(10) Apply for and receive letters of credit or travelers checks from any financial institution selected by the

agent, giving such indemnity or other agreements in that connection as the agent believes desirable or necessary.

(11) Consent to an extension in time of payment with respect to any commercial paper or any banking transaction in which the principal has an interest or by which the principal is or might be affected in any way.

(12) Pay, compromise, or contest taxes or assessments, and apply for refunds in connection therewith.

(13) Demand, receive, and obtain by action, proceeding, or otherwise, any money or other thing of value to which the principal is, may become, or may claim to be entitled as the proceeds of any banking transaction conducted by the principal, or by the agent in the execution of any of the powers described in this section, or partly by the principal and partly by the agent so acting; conserve, invest, disburse, or utilize anything so received for purposes enumerated in this section and to reimburse the agent for any expenditures properly made in the execution of the powers conferred on the agent by the statutory short form power of attorney.

(14) Execute, acknowledge, seal, and deliver any instrument of any kind, in the name of the principal or otherwise, which the agent believes useful for the accomplishment of any of the purposes enumerated in this section.

(15) Prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to, any claim existing in favor of or against the principal based on or involving any banking transaction or intervene in any action or proceeding relating thereto.

(16) Hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant, when the agent believes it necessary or desirable for the proper execution of any of the powers described in this section or for the keeping of needed records.

(17) In general, and in addition to all the specific acts enumerated in this section, do any other act which the principal can do through an agent in connection with any banking transaction which does or might in any way affect the financial or other interests of the principal.

(b) All powers described in this section are exercisable equally with respect to any banking transaction engaged in by the principal at the time of the giving of the power of attorney or thereafter engaged in, whether conducted in this state or elsewhere.

(c) For the purposes of this section:

(1) "Banking transaction" includes a comparable transaction with any type of financial institution.

(2) "Financial institution" means any organization authorized to do business under state or federal laws relating to financial institutions, including, without limitation, banks and trust companies, savings banks, commercial banks, building and loan associations, savings and loan companies or associations, credit unions, and industrial loan companies.

**Comment.** Section 2463 is the same in substance as Section 5-1502D of the New York General Obligations Law except that the phrase "financial institution" has been substituted in Section 2463 for "banker or banking institution" which appears in the New York section and no provision comparable to subdivision (c) of Section 2463 appears in the New York section.

#### § 2464. Business operating transactions

**2464.** (a) In a statutory short form power of attorney, the language conferring general authority with respect to "business operating transactions" shall be construed to mean that the principal authorizes the agent to do all of the following:

(1) To the extent that an agent is permitted by law thus to act for a principal:

(A) Discharge and perform any duty or liability and also exercise any right, power, privilege, or option which the principal has or claims to have under any contract of partnership whether the principal is a general, special, or limited partner.

(B) Enforce the terms of any partnership agreement for the protection of the principal, by action, proceeding, or otherwise, as the agent believes desirable or necessary.

(C) Defend, submit to arbitration, settle, or compromise any action or other legal proceeding to

which the principal is a party because of membership in the partnership.

(2) Exercise in person or by proxy or enforce by action, proceeding, or otherwise, any right, power, privilege, or option which the principal has as the holder of any bond, share, or other instrument of similar character, and defend, submit to arbitration, settle, or compromise any action or other legal proceeding to which the principal is a party because of that bond, share, or other instrument of similar character.

(3) With respect to any business which is owned solely by the principal, do all of the following:

(A) Continue, modify, renegotiate, extend, and terminate any contractual arrangements made with any person, firm, association, or corporation by or on behalf of the principal with respect to the business before the creation of the agency.

(B) Determine the policy of the business as to (i) the location of the site or sites to be utilized for its operation, (ii) the nature and extent of the business to be undertaken, (iii) the methods of manufacturing, selling, merchandising, financing, accounting, and advertising to be employed in its operation, (iv) the amount and types of insurance to be carried, (v) the mode of securing, compensating, and dealing with accountants, attorneys, and other agents and employees required for its operation; agree and contract, in any manner, with any person, and on any terms, which the agent believes desirable or necessary for effectuating these decisions of the agent as to policy; and perform, rescind, reform, release, or modify any such agreement or contract or any other similar agreement or contract made by or on behalf of the principal.

(C) Change the name or form of organization under which the business is operated, and enter into such partnership agreement with other persons or organize such corporation to take over the operation of the business, or any part thereof, as the agent believes desirable or necessary.

(D) Demand and receive all moneys which are or may become due to the principal, or which may be claimed by the principal or on behalf of the principal, in the operation of the business; control and disburse the funds in the operation of the business in any way which the agent believes desirable or necessary; and engage in any banking transactions (as defined in subdivision (c) of Section 2463) the agent believes desirable or necessary for effectuating the execution of any of the powers of the agent described in this subdivision.

(4) Put additional capital into any business in which the principal has an interest; join in any plan of reorganization, consolidation, or merger of that business; sell or liquidate the business at such time and upon such terms as the agent believes desirable; and represent the principal in establishing the value of any business under any buy-out agreement to which the principal is a party.

(5) Prepare, sign, file, and deliver all reports, compilations of information, returns, or other papers with respect to any business operations of the principal, which are required by any governmental agency, department, or instrumentality or which the agent believes desirable or necessary for any purpose, and make any payments with respect to them.

(6) Pay, compromise, or contest taxes or assessments and do any act the agent believes desirable or necessary to protect the principal from illegal or unnecessary taxation, fines, penalties, or assessments in connection with business operations of the principal, including the power to attempt to recover, in any manner permitted by law, sums paid before or after the creation of the agency as taxes, fines, penalties, or assessments.

(7) Demand, receive, and obtain by action, proceeding, or otherwise, any money or other thing of value to which the principal is, may become, or may claim to be entitled as the proceeds of any business operation of the principal; conserve, invest, disburse, or utilize anything so received for purposes enumerated in this section and to reimburse the agent for any expenditures properly made in the execution of the

powers conferred on the agent by the statutory short form power of attorney.

(8) Execute, acknowledge, seal, and deliver any deed, assignment, mortgage, lease, notice, consent, agreement, authorization, check, or other instrument which the agent believes useful for the accomplishment of any of the purposes enumerated in this section.

(9) Prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to, any claim existing in favor of or against the principal based on or involving any business operation or intervene in any action or proceeding relating thereto.

(10) Hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant, when the agent believes it necessary or desirable for the proper execution of any of the powers described in this section or for the keeping of needed records.

(11) In general, and in addition to all the specific acts enumerated in this section, do any other act in connection with any business operated by the principal, which the principal can do through an agent, that the agent believes desirable or necessary for the furtherance or protection of the interests of the principal.

(b) All powers described in this section are exercisable equally with respect to any business in which the principal is interested at the time of the creation of the agency or in which the principal thereafter becomes interested, whether operated in this state or elsewhere.

**Comment.** Section 2464 is the same in substance as Section 5-1502E of the New York General Obligations Law except that paragraph (4) of subdivision (a) has been added to Section 2464.

#### § 2465. Insurance transactions

**2465.** (a) In a statutory short form power of attorney, the language conferring general authority with respect to "insurance transactions" shall be construed to mean that the principal authorizes the agent to do all of the following:

(1) Continue, pay the premium or assessment on, modify, rescind, release, or terminate any contract of life,

accident, health, disability, or liability insurance, or any combination of that insurance, procured by or on behalf of the principal before the creation of the agency which insures either the principal or any other person, without regard to whether the principal is or is not a beneficiary of it.

(2) Procure new, different, or additional contracts of insurance on the life of the principal or on the life of anyone in whom the principal has an insurable interest or for protecting the principal with respect to ill-health, disability, accident, or liability of any sort; select the amount, the type of insurance contract, and the mode of payment under each policy; pay the premium or assessment on, modify, rescind, release, or terminate, any contract so procured by the agent; and designate the beneficiary of any of those contracts of insurance, except that the agent himself or herself shall not be the beneficiary unless the agent is spouse, child, grandchild, parent, brother, or sister of the principal.

(3) Apply for and receive any available loan on the security of the contract of insurance, whether for the payment of a premium or for the procuring of cash, or surrender and receive the cash surrender value of it, or exercise any election as to beneficiary or mode of payment, or change the manner of paying premiums, or change or convert the type of insurance contract, with respect to any contract of life, accident, health, disability, or liability insurance as to which the principal has, or claims to have, any one or more of the powers described in this section; and change the beneficiary of any of those contracts of insurance or of annuity contracts in which the principal has an interest, except that the agent himself or herself shall not be the new beneficiary unless the agent is spouse, child, grandchild, parent, brother, or sister of the principal.

(4) Demand, receive, and obtain by action, proceeding, or otherwise, any money, dividend, or other thing of value to which the principal is, may become, or may claim to be entitled as the proceeds of any contract of insurance or any transaction enumerated in this

section; conserve, invest, disburse, or utilize anything so received for purposes enumerated in this section and to reimburse the agent for any expenditures properly made in the execution of the powers conferred on the agent by the statutory short form power of attorney.

(5) Apply for and procure any available governmental aid in the guaranteeing or paying of premiums of any contract of insurance on the life of the principal.

(6) Sell, assign, hypothecate, borrow upon, or pledge the interest of the principal in any contract of insurance.

(7) Pay from those proceeds or otherwise, compromise, contest, or apply for refunds in connection with, any tax or assessment levied by a taxing authority with respect to any contract of insurance or the proceeds thereof or liability accruing by reason of the tax or assessment.

(8) Agree and contract, in any manner, with any person, and on any terms, which the agent may select, for the accomplishment of any of the purposes enumerated in this section; and perform, rescind, reform, release, or modify any of those agreements or contracts.

(9) Execute, acknowledge, seal, and deliver any consent, demand, request, application, agreement, indemnity, authorization, assignment, pledge, notice, check, receipt, waiver, or other instrument the agent believes useful for the accomplishment of any of the purposes enumerated in this section.

(10) Continue, procure, pay the premium or assessment on, modify, rescind, release, terminate, or otherwise deal with any contract of insurance, other than those enumerated in paragraph (1) or (2), whether fire, marine, burglary, compensation, disability, liability, hurricane, earthquake, casualty, or other type, or any combination of insurance; and do any act with respect to any of those contracts or with respect to their proceeds or enforcement which the agent believes desirable or necessary for the promotion or protection of the interests of the principal.

(11) Prosecute, defend, submit to arbitration, settle, adjust, and propose or accept a compromise, with respect

to any claim existing in favor of or against the principal based on or involving any insurance transaction or intervene in any action or proceeding relating thereto.

(12) Hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant, when the agent believes it necessary or desirable for the proper execution of any of the powers described in this section or for the keeping of needed records.

(13) In general, and in addition to all the specific acts enumerated in this section, do any other act which the principal can do through an agent in connection with procuring, supervising, managing, modifying, enforcing, and terminating contracts of insurance in which the principal is the insured or is otherwise interested.

(b) All powers described in this section are exercisable with respect to any contract of insurance in which the principal is in any way interested, whether made in this state or elsewhere.

**Comment.** Section 2465 is the same in substance as Section 5-1502F of the New York General Obligations Law except that the paragraph (2) of subdivision (a) of Section 2465 authorizes contracts of insurance on the life of anyone in whom the principal has an insurable interest and the last portion of paragraph (3) of subdivision (a) of Section 2465 is extended to cover changing the beneficiary of an annuity contract in which the principal has an interest.

#### § 2466. Retirement plans

2466. (a) In a statutory short form power of attorney, the language conferring general authority with respect to "retirement plan transactions" shall be construed to mean that the principal authorizes the agent to do all of the following:

(1) Select various payment options under any retirement plan in which the principal participates, including plans for self-employed individuals, except that the agent himself or herself shall not be the beneficiary unless the agent is spouse, child, grandchild, parent, brother, or sister of the principal.

(2) Make beneficiary designations under those plans and change any existing beneficiary designations, except

that the agent himself or herself shall not be the beneficiary unless the agent is spouse, child, grandchild, parent, brother, or sister of the principal.

(3) Make voluntary contributions to those plans.

(4) Make "rollovers" of plan benefits into other retirement plans.

(5) Borrow from those plans if authorized by the plan, and sell assets to or purchase assets from the plan if authorized by the plan.

(6) In general, and in addition to all the specific acts enumerated in this section, do any other act which the principal can do through an agent with respect to retirement plans in which the principal is interested.

(b) All powers described in this section are exercisable with respect to any retirement plan in which the principal is in any way interested, whether the plan is in this state or elsewhere.

Comment. Section 2466 has no counterpart in the New York law.

#### § 2467. Estate transactions

2467. (a) In a statutory short form power of attorney, the language conferring general authority with respect to "estate transactions" shall be construed to mean that the principal authorizes the agent to do all of the following:

(1) To the extent that an agent is permitted by law thus to act for a principal, apply for and procure, in the name of the principal, letters of administration, letters testamentary, letters of trusteeship, or any other type of authority, either judicial or administrative, and act as a fiduciary of any sort.

(2) To the extent that an agent is permitted by law thus to act for a principal, represent and act for the principal in all ways and in all matters affecting any estate of a decedent, absentee, minor, or incompetent, or any trust or other fund, out of which the principal is entitled, or claims to be entitled, to some share or payment or with respect to which the principal is a fiduciary.

(3) Accept, reject, receive, receipt for, sell, assign, release, disclaim, renounce, pledge, exchange, or consent

to a reduction in or modification of, any share in or payment from any estate, trust, or other fund, with or without consideration.

(4) Demand and obtain by action, proceeding, or otherwise, any money or other thing of value to which the principal is, may become, or may claim to be entitled by reason of the death testate or intestate of any person or of any testamentary disposition or of any trust or by reason of the administration of the estate of a decedent or absentee or of the guardianship of a minor or the conservatorship of an incompetent or the administration of any trust or other fund; initiate, participate in, or oppose any proceeding, judicial or otherwise, for the ascertainment of the meaning, validity, or effect of any deed, will, declaration of trust, or other transaction affecting in any way the interest of the principal; initiate, participate in, or oppose any proceeding, judicial or otherwise, for the removal, substitution, or surcharge of a fiduciary; and conserve, invest, disburse, or utilize anything so received for purposes enumerated in this section and to reimburse the agent for any expenditures properly made in the execution of the powers conferred on the agent by the statutory short form power of attorney.

(5) Establish any trust with the assets of the principal for the benefit of the principal and the spouse and descendants of the principal, or any one or more of them, upon such terms as the agent determines are necessary or proper; transfer any asset in which the principal has an interest to any such trust or to any trust that the principal has created; and exercise in whole or in part, release, or let lapse any power the principal may have under any trust whether or not created by the principal, including any power of appointment, revocation, or withdrawal.

(6) Purchase for the principal United States treasury bonds redeemable at par value in payment of federal estate taxes; borrow money from any source for that purpose; make, execute, endorse, and deliver promissory notes, bills of exchange, drafts, agreements, or other obligations for those bonds, and as security for them

pledge, mortgage, and assign any stock, bonds, securities, insurance values, or other properties, real or personal, in which the principal may have an interest; and arrange for the safekeeping and custody of any of those treasury bonds.

(7) Prepare, sign, file, and deliver all reports, compilations of information, returns, or papers with respect to any interest had or claimed by or on behalf of the principal in any estate, trust, or other fund; and pay, compromise, or contest, and apply for refunds in connection with any tax or assessment with respect to (A) any interest had or claimed by or on behalf of the principal in any estate, trust, or other fund or by reason of the death of any person or (B) any property in which that interest is had or claimed.

(8) Agree and contract, in any manner, with any person, and on any terms, which the agent may select, for the accomplishment of the purposes enumerated in this section; and perform, rescind, reform, release, or modify any such agreement or contract or any other similar agreement or contract made by or on behalf of the principal.

(9) Execute, acknowledge, verify, seal, file, and deliver any consent, designation, pleading, notice, demand, election, conveyance, release, disclaimer, assignment, check, pledge, waiver, admission of service, notice of appearance, or other instrument the agent believes useful for the accomplishment of any of the purposes enumerated in this section.

(10) Submit to arbitration, settle, and propose or accept a compromise with respect to, any controversy or claim which affects the estate of a decedent, absentee, minor, or incompetent, or the administration of a trust or other fund, in which the principal has or claims to have an interest; and do any act which the agent believes desirable or necessary in effectuating the compromise.

(11) Hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant, when the agent believes it necessary or desirable for the proper execution of any of the powers described in this section or for the keeping of needed records.

(12) In general, and in addition to all the specific acts enumerated in this section, do any other act which the principal can do through an agent with respect to the estate of a decedent, absentee, minor, or incompetent, or the administration of a trust or other fund, in any one of which the principal has or claims to have an interest or with respect to which the principal is a fiduciary.

(b) All powers described in this section are exercisable equally with respect to any estate of a decedent, absentee, minor, or incompetent, or the administration of any trust or other fund, in which the principal is interested at the time of the giving of the power of attorney or may thereafter become interested, whether located in this state or elsewhere.

**Comment.** Section 2467 is the same in substance as Section 5-1502G of the New York General Obligations Law except that paragraphs (5) and (6) of subdivision (a) are not included in the New York law.

#### § 2468. Claims and litigation

2468. (a) In a statutory short form power of attorney, the language conferring general authority with respect to "claims and litigation" shall be construed to mean that the principal authorizes the agent to do all of the following:

(1) Assert and prosecute before any court, administrative board, department, commissioner, or other tribunal, any cause of action, claim, counterclaim, cross-complaint, offset, or defense, which the principal has, or claims to have, against any individual, partnership, association, corporation, government, or other person or instrumentality, including by way of illustration, and not of restriction, the power to sue for the recovery of real property or of any other thing of value, for the recovery of damages sustained by the principal in any manner, for the elimination or modification of tax liability, for an injunction, for specific performance, or for any other relief.

(2) Bring an action of interpleader or other action to determine adverse claims; intervene or interplead in any

action or proceeding; and act in any litigation as *amicus curiae*.

(3) In connection with any action or proceeding or controversy, at law or otherwise, apply for and, if possible, procure a libel, an attachment, a garnishment, or other preliminary, provisional, or intermediate relief, and resort to and utilize in all ways permitted by law any available procedure for the effectuation, enforcement, or satisfaction of the judgment, order, or decree obtained.

(4) In connection with any action or proceeding, perform any act that the principal might perform, including by way of illustration, but not of restriction, acceptance of tender, offer of judgment, admission of facts, submission of any controversy on an agreed statement of facts, consent to examination before trial; and generally bind the principal in the conduct of any litigation or controversy as seems desirable to the agent.

(5) Submit to arbitration, settle, and propose or accept a compromise with respect to, any claim existing in favor of or against the principal, or any litigation to which the principal is, may become, or may be designated a party.

(6) Waive the issuance and service of a summons, citation, or other process upon the principal; accept service of process; appear for the principal; designate persons upon whom process directed to the principal may be served; execute and file or deliver stipulations on the principal's behalf; verify pleadings; appeal to appellate tribunals; procure and give surety and indemnity bonds at such times and to such extent as the agent believes desirable or necessary; contract and pay for the preparation and printing of records and briefs; and receive, execute, and file or deliver any consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument which the agent believes desirable or necessary in connection with the prosecution, settlement, or defense of any claim by or against the principal or of any litigation to which the principal is, may become, or may be designated a party.

(7) Appear for, represent, and act for the principal with respect to bankruptcy or insolvency proceedings, whether voluntary or involuntary, whether of the

principal or of some other person, or with respect to any reorganization proceeding, or with respect to any assignment for the benefit of creditors, receivership, or application for the appointment of a receiver or trustee, which in any way affects any interest of the principal in any real or personal property, bond, share, commodity interest, chose in action, or other thing of value.

(8) Hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant, when the agent believes it necessary or desirable for the proper execution of any of the powers described in this section.

(9) Pay, from funds in the agent's control or for the account of the principal, any judgment against the principal or any settlement which may be made in connection with any transaction enumerated in this section; receive and conserve moneys or other things of value paid in settlement of or as proceeds of any transaction enumerated in this section; and receive, endorse, and deposit checks.

(10) In general, and in addition to all the specific acts enumerated in this section, do any other act which the principal can do through an agent in connection with any claim by or against the principal or with litigation to which the principal is, may become, or may be designated a party.

(b) All powers described in this section are exercisable equally with respect to any claim or litigation existing at the time of the giving of the power of attorney or thereafter arising, whether arising in this state or elsewhere.

**Comment.** Section 2468 is the same in substance as Section 5-1502H of the New York General Obligations Law.

#### § 2469. Tax matters

2469. (a) In a statutory short form power of attorney, the language conferring general authority with respect to "tax matters" shall be construed to mean that the principal authorizes the agent to do all of the following:

(1) Prepare, sign, and file federal, state, local, and foreign income, gift, or other tax returns of all kinds,

FICA returns, payroll tax returns, claims for refunds, requests for extension of time, petitions to the tax court or other courts regarding tax matters, and any other tax related documents, including without limitation receipts, offers, waivers, consents (including, but not limited to, consents and agreements under Internal Revenue Code Section 2032A or any successor section), closing agreements, and any power of attorney form required by the Internal Revenue Service, the California Franchise Tax Board, or any other taxing authority with respect to any tax year between the year of the giving of the power of attorney and the year ending 25 years thereafter.

(2) Pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service, the California Franchise Tax Board, or other taxing authority.

(3) Exercise any elections the principal may have under federal, state, local, or foreign tax law.

(4) In general, and in addition to all the specific acts enumerated in this section, do any other act, which the principal can do through an agent, to represent the principal in all tax matters and proceedings of all kinds and for all periods before all officers of the Internal Revenue Service, the California Franchise Tax Board, and any other taxing authority, whether in this state or elsewhere.

**Comment.** Section 2469 is a new provision. No comparable provision is found in the New York statute dealing only with tax matters, but various provisions of the New York statute which are found in this chapter deal with tax matters that arise in connection with various kinds of transactions.

### § 2470. Personal relationships and affairs

2470. (a) In a statutory short form power of attorney, the language conferring general authority with respect to "personal relationships and affairs" shall be construed to mean that the principal authorizes the agent to do all of the following:

(1) Do all acts necessary for maintaining the customary standard of living of the spouse and children

and other dependents of the principal, including by way of illustration, but not of restriction, the power to do the following:

(A) Provide living quarters (i) by purchase, lease, or other contract or (ii) by payment of the operating costs, including interest, amortization payments, insurance, repairs, and taxes, of premises owned by the principal and occupied by the family or dependents of the principal.

(B) Provide normal domestic help for the operation of the household.

(C) Provide usual vacations and usual travel expenses.

(D) Provide for education, including education at vocational and trade schools, training in music, stage, handicrafts, arts, and sports, special training provided at institutions for the mentally or physically handicapped, undergraduate and graduate study in any field at public or private universities, colleges, or other institutions of higher learning, and, in providing for that education, pay for tuition, books, and incidental charges made by the educational institutions, travel costs to and from those institutions, room and board, and a reasonable amount of spending money.

(E) Provide funds for all the current living costs of the spouse, children, and other dependents of the principal, including, among other things, shelter, clothing, food, and incidentals.

(2) Provide, whenever necessary, medical, dental, and psychiatric care, hospitalization, and custodial care for the spouse, children, and other dependents of the principal.

(3) Continue whatever provision has been made by the principal, before or after the creation of the agency, for the spouse, children, and other dependents of the principal, with respect to automobiles or other means of transportation, including by way of illustration, but not of restriction, the power to license, insure, and replace any automobiles owned by the principal and customarily used by the spouse, children, or other dependents of the principal.

(4) Continue whatever charge accounts have been operated by the principal, before or after the creation of the agency, for the convenience of the spouse, children, or other dependents of the principal; open those new charge accounts which the agent believes desirable for the accomplishment of any of the purposes enumerated in this section; and pay the items charged on the accounts by any person authorized or permitted by the principal, before the creation of the agency, to make charges.

(5) Continue the discharge of any services or duties assumed by the principal, before or after the creation of the agency, to any parent, relative, or friend of the principal.

(6) Supervise, enforce, defend, or settle any claim by or against the principal arising out of property damages or personal injuries suffered by or caused by the principal or arising under such circumstances that the loss resulting therefrom will or may fall on the principal.

(7) Continue payments incidental to the membership or affiliation of the principal in any church, club, society, order, or other organization and continue contributions to it.

(8) Make gifts, grants, or other transfers without consideration to or for the benefit of the spouse or descendants of the principal or a charitable institution, or more than one or all of them, either outright or in trust, including the forgiveness of indebtedness and the completion of any charitable pledges the principal may have made; consent to the splitting of gifts under Internal Revenue Code Section 2513, or successor sections, if the spouse of the principal makes gifts to any one or more of the descendants of the principal or to a charitable institution; pay any gift tax that may arise by reason of those gifts; and loan any of the assets of the principal to the spouse or descendants of the principal, or their personal representatives or a trustee for their benefit, the loan bearing such interest, and to be secured or unsecured, as the agent determines advisable.

(9) Demand, receive, and obtain by action, proceeding, or otherwise, any money or other thing of

value to which the principal is, may become, or may claim to be entitled as salary, wages, commission, or other remuneration for services performed, or as a dividend or distribution upon any stock, or as interest or principal upon any indebtedness, or as any periodic distribution of profits from any partnership or business in which the principal has or claims an interest, and endorse, collect, or otherwise realize upon any instrument for the payment so received.

(10) Prepare, execute, and file all tax, social security, unemployment insurance, and information returns required by the laws of the United States, any state or subdivision thereof, or any foreign government; prepare, execute, and file all other papers and instruments which the agent believes desirable or necessary for the safeguarding of the principal against excess or illegal taxation or against penalties imposed for claimed violation of any law or other governmental regulation; and pay, compromise, or contest, or apply for refunds in connection with, any taxes or assessments for which the principal is or may be liable.

(11) Utilize any asset of the principal for the performance of the powers enumerated in this section, including by way of illustration, and not of restriction, the power to do all of the following:

(A) Draw money by check or otherwise from any deposit of the principal.

(B) Sell any real or personal property, bond, share, commodity interest, chose in action, or other asset of the principal.

(C) Borrow money and pledge as security for the loan any asset, including insurance, which belongs to the principal.

(12) Execute, acknowledge, verify, seal, file, and deliver any application, consent, petition, notice, release, waiver, agreement, or other instrument the agent believes useful for the accomplishment of any of the purposes enumerated in this section.

(13) Prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to, any

claim existing in favor of or against the principal based on or involving any transaction enumerated in this section or intervene in any action or proceeding relating thereto.

(14) Hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant, when the agent believes it necessary or desirable for the proper execution of any of the powers described in this section or for the keeping of needed records.

(15) In general, and in addition to all the specific acts enumerated in this section, do any other act which the principal can do through an agent for the welfare of the spouse, children, or dependents of the principal or for the preservation and maintenance of the other personal relationships of the principal to parents, relatives, friends, and organizations.

(b) All powers described in this section are exercisable equally whether the acts required for their execution relate to real or personal property owned by the principal at the time of the giving of the power of attorney or thereafter acquired and whether the acts are performable in this state or elsewhere.

**Comment.** Section 2470 is the same in substance as Section 5-1502I of the New York General Obligations Law except that paragraph (8) of subdivision (a) of Section 2470 is not included in the New York section.

#### § 2471. Benefits from military service

2471. (a) In a statutory short form power of attorney, the language conferring general authority with respect to "benefits from military service" shall be construed to mean that the principal authorizes the agent to do all of the following:

(1) Execute vouchers in the name of the principal for allowances and reimbursements payable to the principal by the United States or by any state or subdivision thereof, including by way of illustration, and not of restriction, all allowances and reimbursements for transportation of the principal and of the dependents of the principal and for shipment of household effects; and receive, endorse, and collect the proceeds of any check

payable to the order of the principal drawn on the treasurer or other fiscal officer or depository of the United States or of any state or subdivision thereof.

(2) Take possession and order the removal and shipment of any property of the principal from any post, warehouse, depot, dock, or other place of storage or safekeeping, governmental or private; and execute and deliver any release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument the agent believes desirable or necessary for that purpose.

(3) Prepare, file, and prosecute the claim of the principal to any benefit or assistance, financial or otherwise, to which the principal is or claims to be entitled under the provisions of any statute or regulation existing at the time of the creation of the agency or thereafter enacted by the United States or by any state or by any subdivision thereof, or by any foreign government, which benefit or assistance arises from or is based upon military service performed before or after the creation of the agency by the principal or by any person related by blood or by marriage to the principal; and execute any receipt or other instrument the agent believes desirable or necessary for enforcement or collection of the claim.

(4) Receive the financial proceeds of any claim of the type described in this section; conserve, invest, disburse, or utilize anything so received for purposes enumerated in this section and to reimburse the agent for any expenditures properly made in the execution of the powers conferred on the agent by the statutory short form power of attorney.

(5) Prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to, any claim existing in favor of or against the principal based on or involving any benefits from military service or intervene in any action or proceeding relating to it.

(6) Hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant, when the agent believes it necessary or desirable for the proper execution of any of the powers described in this section.

(7) In general, and in addition to all the specific acts enumerated in this section, do any other act which the principal can do through an agent that the agent believes desirable or necessary to assure to the principal and to dependents of the principal the maximum possible benefit from the military service performed before or after the creation of the agency by the principal or by any person related by blood or marriage to the principal.

(b) All powers described in this section are exercisable equally with respect to any benefits from military service existing at the time of the giving of the power of attorney or thereafter accruing, whether accruing in this state or elsewhere.

Comment. Section 2471 is the same in substance as Section 5-1502J of the New York General Obligations Law.

§ 2472. Records, reports, and statements

2472. (a) In a statutory short form power of attorney, the language conferring general authority with respect to "records, reports, and statements" shall be construed to mean that the principal authorizes the agent to do all of the following:

(1) Keep records of all cash received and disbursed for or on account of the principal, of all credits and debits to the account of the principal, and of all transactions affecting in any way the assets and liabilities of the principal.

(2) Prepare, execute, and file all tax, social security, unemployment insurance, and information returns required by the laws of the United States or any state or subdivision thereof or any foreign government; and prepare, execute, and file all other papers and instruments the agent believes desirable or necessary for the safeguarding of the principal against excess or illegal taxation or against penalties imposed for claimed violation of any law or other governmental regulation.

(3) Prepare, execute, and file any record, report, or statement the agent believes desirable or necessary for the safeguarding or maintenance of the principal's interest with respect to price, rent, wage, or rationing control or other governmental activity.

(4) Hire, discharge, and compensate any attorney, accountant, or other assistant, when the agent believes it necessary or desirable for the proper execution of any of the powers described in this section.

(5) In general, and in addition to all the specific acts enumerated in this section, do any other act which the principal can do through an agent in connection with the preparation, execution, filing, storage, or other utilization of any records, reports, or statements of or concerning the principal's affairs.

(b) All powers described in this section are exercisable equally with respect to any records, reports, and statements of or concerning the affairs of the principal existing at the time of the giving of the power of attorney or thereafter arising, whether in this state or elsewhere.

**Comment.** Section 2472 is the same in substance as Section 5-1502K of the New York General Obligations Law.

#### § 2473. All other matters

2473. (a) Except as provided in subdivision (b), in a statutory short form power of attorney, the language conferring general authority with respect to "all other matters" shall be construed to mean that the principal authorizes the agent to act as an alter ego of the principal with respect to any and all possible matters and affairs which are not enumerated in Sections 1460 to 1472, inclusive, and which the principal can do through an agent.

(b) A statutory short form power of attorney under this chapter does not authorize the agent to make health care decisions, as defined in Section 2430, for the principal.

**Comment.** Subdivision (a) of Section 2473 is the same in substance as Section 5-1502L of the New York General Obligations Law. Subdivision (b) is consistent with Section 2433 (printed form of a durable power of attorney for health care sold in this state for use by a person who does not have the advice of legal counsel shall provide no other authority than the authority to make health care decisions on behalf of the principal).

## DURABLE POWER OF ATTORNEY FOR HEALTH CARE

An act to amend Sections 2421, 2433, and 2437 of, and to add Chapter 4 (commencing with Section 2500) to Title 9 of Part 4 of Division 3 of, the Civil Code, relating to powers of attorney.

*The people of the State of California do enact as follows:*

Civil Code § 2421 (technical amendment). Limiting right to petition for court review

SECTION 1. Section 2421 of the Civil Code is amended to read:

**2421.** (a) Except as provided in subdivisions (b), (c), and (d), a power of attorney may expressly eliminate the authority of any person listed in Section 2411 to petition the court under this article for any one or more of the purposes enumerated in Section 2412 or 2412.5 if both of the following requirements are met:

(1) The power of attorney is executed by the principal at a time when the principal has the advice of a lawyer ~~licensed~~ *authorized* to practice law in the state where the power of attorney is executed.

~~(2) The approval of the lawyer described in paragraph (1) of the power of attorney is included as a part of the instrument that constitutes the power of attorney.~~

*(2) The principal's lawyer signs a certificate stating in substance; "I am a lawyer authorized to practice law in the state where this power of attorney was executed, and the principal was my client at the time this power of attorney was executed. I have advised my client concerning his or her rights in connection with this power of attorney and the applicable law and the consequences of signing or not signing this power of attorney, and my client, after being so advised, has executed this power of attorney."*

(b) Notwithstanding any provision of the power of attorney, except as provided in subdivision (c), the conservator of the estate of the principal may petition the

court under this article for any one or more of the purposes enumerated in Section 2412.

(c) Notwithstanding any provision of the power of attorney, in the case of a durable power of attorney for health care, the conservator of the person of the principal may petition the court under this article for any of the purposes enumerated in subdivisions (a), (c), and (d) of Section 2412.5.

(d) Notwithstanding any provision of the power of attorney, in the case of a durable power of attorney for health care, the attorney in fact may petition the court under this article for any of the purposes enumerated in subdivisions (a) and (b) of Section 2412.5.

**Comment.** Sections 2421 and 2433 are amended so that the lawyer's certificate provided for in those sections and the lawyer's certificate provided for in Section 2501 are phrased the same. This will avoid the need to include more than one certificate of the lawyer where a certificate is required under more than one of those sections.

#### **Civil Code § 2433 (technical amendment). Requirements for printed form**

**SEC. 2.** Section 2433 of the Civil Code is amended to read:

**2433.** (a) A printed form of a durable power of attorney for health care sold in this state for use by a person who does not have the advice of legal counsel shall provide no other authority than the authority to make health care decisions on behalf of the principal and shall include the following notice in 10-point boldface type:

#### **WARNING TO PERSON EXECUTING THIS DOCUMENT**

This is an important legal document. It creates a durable power of attorney for health care. Before executing this document, you should know these important facts:

1. This document gives the person you designate as your attorney in fact the power to make health care decisions for you, subject to any limitations or statement

of your desires that you include in this document. The power to make health care decisions for you may include consent, refusal of consent, or withdrawal of consent to any care, treatment, service, or procedure to maintain, diagnose, or treat a physical or mental condition. You may state in this document any types of treatment or placements that you do not desire.

2. The person you designate in this document has a duty to act consistent with your desires as stated in this document or otherwise made known or, if your desires are unknown, to act in your best interests.

3. Except as you otherwise specify in this document, the power of the person you designate to make health care decisions for you may include the power to consent to your doctor not giving treatment or stopping treatment which would keep you alive.

4. Unless you specify a shorter period in this document, this power will exist for seven years from the date you execute this document and, if you are unable to make health care decisions for yourself at the time when this seven-year period ends, this power will continue to exist until the time when you become able to make health care decisions for yourself.

5. Notwithstanding this document, you have the right to make medical and other health care decisions for yourself so long as you can give informed consent with respect to the particular decision. In addition, no treatment may be given to you over your objection, and health care necessary to keep you alive may not be stopped if you object.

6. You have the right to revoke the appointment of the person designated in this document by notifying that person of the revocation orally or in writing.

7. You have the right to revoke the authority granted to the person designated in this document to make health care decisions for you by notifying the treating physician, hospital, or other health care provider orally or in writing.

8. The person designated in this document to make health care decisions for you has the right to examine

your medical records and to consent to their disclosure unless you limit this right in this document.

9. If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

(b) The printed form described in subdivision (a) shall also include the following notice: "This power of attorney will not be valid for making health care decisions unless it is either (1) signed by two qualified witnesses who are personally known to you and who are present when you sign or acknowledge your signature or (2) acknowledged before a notary public in California."

(c) A durable power of attorney prepared in this state that permits the attorney in fact to make health care decisions and that is not a printed form shall include one of the following:

(1) The substance of the statements provided for in subdivision (a) in capital letters.

(2) A certificate ~~of a~~ *signed by the principal's lawyer representing the principal stating in substance: "I am a lawyer authorized to practice law in the state where this power of attorney was executed, and the principal was my client at the time this power of attorney was executed. I have advised my client concerning his or her rights in connection with this durable power of attorney and the applicable law applicable thereto, including, but not limited to, the matters listed in subdivision (a) of Section 2423 of the Civil Code, and the consequences of signing or not signing this durable power of attorney, and my client, after being so advised, has executed this durable power of attorney."*

Comment. See the Comment to Section 2421.

Civil Code § 2437 (amended). Revocation of durable power of attorney for health care

SEC. 3. Section 2437 of the Civil Code is amended to read:

2437. (a) At any time while the principal has the capacity to give a durable power of attorney for health care, the principal may do any of the following:

(1) Revoke the appointment of the attorney in fact under the durable power of attorney for health care by notifying the attorney in fact orally or in writing.

(2) Revoke the authority granted to the attorney in fact to make health care decisions by notifying the health care provider orally or in writing.

(b) If the principal notifies the health care provider orally or in writing that the authority granted to the attorney in fact to make health care decisions is revoked, the health care provider shall make the notification a part of the principal's medical records and shall make a reasonable effort to notify the attorney in fact of the revocation.

(c) It is presumed that the principal has the capacity to revoke a durable power of attorney for health care. This presumption is a presumption affecting the burden of proof.

(d) Unless it provides otherwise, a valid durable power of attorney for health care revokes any prior durable power of attorney for health care.

(e) Unless the durable power of attorney expressly provides otherwise, if after executing a durable power of attorney for health care the principal's marriage is dissolved or annulled, the dissolution or annulment revokes any designation of the former spouse as an attorney in fact to make health care decisions for the principal. If any designation is revoked solely by this subdivision, it is revived by the principal's remarriage to the former spouse.

*(f) If authority granted by a durable power of attorney for health care is revoked under this section, a person is not subject to criminal prosecution or civil liability for acting in reliance upon the durable power of attorney unless the person has actual knowledge of the revocation.*

**Comment.** Subdivision (f) is added to Section 2437 to make clear that a person is not liable for acting in reliance upon the durable power of attorney being effective unless the person has actual knowledge of the revocation. The subdivision is merely a specific application of the rule stated in subdivision (b) of Section 2356 and is comparable to a provision found in the Natural Death Act. See Section 7189(b) of the Health and Safety Code.

Although a person is protected if the person acts without actual notice of the revocation, a person who withholds knowledge of the revocation is guilty of unlawful homicide where the death of the principal is hastened as a result of the failure to disclose the revocation. See Section 2442.

**Civil Code §§ 2500-2506 (added)**

**SEC. 4. Chapter 4 (commencing with Section 2500) is added to Title 9 of Part 4 of Division 3 of the Civil Code, to read:**

**CHAPTER 4. STATUTORY FORM DURABLE  
POWER OF ATTORNEY FOR HEALTH CARE**

**§ 2500. Statutory form of durable power of attorney for health care**

**2500. The use of the following form in the creation of a durable power of attorney for health care under Article 5 (commencing with Section 2430) of Chapter 2 is lawful, and when used, the power of attorney shall be construed in accordance with the provisions of this chapter and shall be subject to the provisions of Article 5 (commencing with Section 2430) of Chapter 2.**

**STATUTORY FORM DURABLE POWER OF  
ATTORNEY FOR HEALTH CARE  
(California Civil Code Section 2500)**

**WARNING TO PERSON EXECUTING THIS  
DOCUMENT**

**THIS IS AN IMPORTANT LEGAL DOCUMENT.  
BEFORE EXECUTING THIS DOCUMENT, YOU  
SHOULD KNOW THESE IMPORTANT FACTS:**

**THIS DOCUMENT GIVES THE PERSON YOU  
DESIGNATE AS YOUR AGENT (THE  
ATTORNEY-IN-FACT) THE POWER TO MAKE  
HEALTH CARE DECISIONS FOR YOU. YOUR  
AGENT MUST ACT CONSISTENTLY WITH YOUR  
DESIRES AS STATED IN THIS DOCUMENT OR**

**OTHERWISE KNOWN. IF YOUR DESIRES ARE UNKNOWN, YOUR AGENT MUST MAKE DECISIONS THAT IN THE JUDGMENT OF THE AGENT ARE IN YOUR BEST INTERESTS.**

**EXCEPT AS YOU OTHERWISE SPECIFY IN THIS DOCUMENT, THIS DOCUMENT GIVES YOUR AGENT THE POWER TO CONSENT TO YOUR DOCTOR NOT GIVING TREATMENT OR STOPPING TREATMENT NECESSARY TO KEEP YOU ALIVE.**

**NOTWITHSTANDING THIS DOCUMENT, YOU HAVE THE RIGHT TO MAKE MEDICAL AND OTHER HEALTH CARE DECISIONS FOR YOURSELF SO LONG AS YOU CAN GIVE INFORMED CONSENT WITH RESPECT TO THE PARTICULAR DECISION. IN ADDITION, NO TREATMENT MAY BE GIVEN TO YOU OVER YOUR OBJECTION AT THE TIME, AND HEALTH CARE NECESSARY TO KEEP YOU ALIVE MAY NOT BE STOPPED OR WITHHELD IF YOU OBJECT AT THE TIME.**

**THIS DOCUMENT GIVES YOUR AGENT AUTHORITY TO CONSENT, TO REFUSE TO CONSENT, OR TO WITHDRAW CONSENT TO ANY CARE, TREATMENT, SERVICE, OR PROCEDURE TO MAINTAIN, DIAGNOSE, OR TREAT A PHYSICAL OR MENTAL CONDITION. THIS POWER IS SUBJECT TO ANY STATEMENT OF YOUR DESIRES AND ANY LIMITATIONS THAT YOU INCLUDE IN THIS DOCUMENT. YOU MAY STATE IN THIS DOCUMENT ANY TYPES OF TREATMENT THAT YOU DO NOT DESIRE. IN ADDITION, A COURT CAN TAKE AWAY THE POWER OF YOUR AGENT TO MAKE HEALTH CARE DECISIONS FOR YOU IF YOUR AGENT (1) AUTHORIZES ANYTHING THAT IS ILLEGAL, (2) ACTS CONTRARY TO YOUR KNOWN DESIRES, OR (3) WHERE YOUR DESIRES ARE NOT KNOWN, DOES ANYTHING THAT IS CLEARLY CONTRARY TO YOUR BEST INTERESTS.**

**UNLESS YOU SPECIFY A SHORTER PERIOD IN THIS DOCUMENT, THIS POWER WILL EXIST FOR SEVEN YEARS FROM THE DATE YOU EXECUTE**

**THIS DOCUMENT AND, IF YOU ARE UNABLE TO MAKE HEALTH CARE DECISIONS FOR YOURSELF AT THE TIME WHEN THIS SEVEN-YEAR PERIOD ENDS, THIS POWER WILL CONTINUE TO EXIST UNTIL THE TIME WHEN YOU BECOME ABLE TO MAKE HEALTH CARE DECISIONS FOR YOURSELF.**

**YOU HAVE THE RIGHT TO REVOKE THE AUTHORITY OF YOUR AGENT BY NOTIFYING YOUR AGENT OR YOUR TREATING DOCTOR, HOSPITAL, OR OTHER HEALTH CARE PROVIDER ORALLY OR IN WRITING OF THE REVOCATION.**

**YOUR AGENT HAS THE RIGHT TO EXAMINE YOUR MEDICAL RECORDS AND TO CONSENT TO THEIR DISCLOSURE UNLESS YOU LIMIT THIS RIGHT IN THIS DOCUMENT.**

**THIS DOCUMENT REVOKES ANY PRIOR DURABLE POWER OF ATTORNEY FOR HEALTH CARE.**

**YOU SHOULD CAREFULLY READ AND FOLLOW THE WITNESSING PROCEDURE DESCRIBED AT THE END OF THIS FORM. THIS DOCUMENT WILL NOT BE VALID UNLESS YOU COMPLY WITH THE WITNESSING PROCEDURE.**

**IF THERE IS ANYTHING IN THIS DOCUMENT THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.**

**YOUR AGENT MAY NEED THIS DOCUMENT IMMEDIATELY IN CASE OF AN EMERGENCY THAT REQUIRES A DECISION CONCERNING YOUR HEALTH CARE. EITHER KEEP THIS DOCUMENT WHERE IT IS IMMEDIATELY AVAILABLE TO YOUR AGENT AND ALTERNATE AGENTS OR GIVE EACH OF THEM AN EXECUTED COPY OF THIS DOCUMENT. YOU MAY ALSO WANT TO GIVE YOUR DOCTOR AN EXECUTED COPY OF THIS DOCUMENT.**

**DO NOT USE THIS FORM IF YOU ARE A CONSERVATEE UNDER THE LANTERMAN-PETRIS-SHORT ACT AND YOU WANT TO APPOINT YOUR CONSERVATOR AS YOUR**

**AGENT. YOU CAN DO THAT ONLY IF THE APPOINTMENT DOCUMENT INCLUDES A CERTIFICATE OF YOUR ATTORNEY.**

**1. DESIGNATION OF HEALTH CARE AGENT. I,**

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(Insert your name and address)

do hereby designate and appoint \_\_\_\_\_

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(Insert name, address, and telephone number of one individual only as your agent to make health care decisions for you. None of the following may be designated as agent: (1) your treating health care provider, (2) an employee of your treating health care provider, (3) an operator of a community care facility, or (4) an employee of an operator of a community care facility.)

as my attorney-in-fact (agent) to make health care decisions for me as authorized in this document. For the purposes of this document, "health care decision" means consent, refusal of consent, or withdrawal of consent to any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition.

**2. CREATION OF DURABLE POWER OF ATTORNEY FOR HEALTH CARE.** By this document I intend to create a durable power of attorney for health care under Sections 2430 to 2443, inclusive, of the California Civil Code. This power of attorney shall be construed in accordance with the provisions of Sections 2500 to 2505, inclusive, of the California Civil Code. This power of attorney shall not be affected by my subsequent incapacity.

**3. GENERAL STATEMENT OF AUTHORITY GRANTED.** Subject to any limitations in this document, I hereby grant to my agent full power and authority to make health care decisions for me to the same extent that I could make such decisions for myself if I had the capacity to do so. In exercising this authority, my agent shall make health care decisions that are consistent with my desires as stated in this document or otherwise made known to my agent, including, but not limited to, my desires concerning obtaining or refusing or withdrawing

life-prolonging care, treatment, services, and procedures. If my desires are unknown or unclear, my agent shall make health care decisions for me that in the judgment of my agent are in my best interests.

(If you want to limit the authority of your agent to make health care decisions for you, you can state the limitations in paragraph 4 ("Statement of Desires, Special Provisions, and Limitations") below. You can indicate your desires by including a statement of your desires in the same paragraph.)

**4. STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS.**

(Your agent must make health care decisions that are consistent with your known desires. You can, but are not required to, state your desires in the space provided below. You should consider whether you want to include a statement of your desires concerning life-prolonging care, treatment, services, and procedures. You can also include a statement of your desires concerning other matters relating to your health care. You can also make your desires known to your agent by discussing your desires with your agent or by some other means. If there are any types of treatment that you do not want to be used, you should state them in the space below. If you want to limit in any other way the authority given your agent by this document, you should state the limits in the space below. If you do not state any limits, your agent will have broad powers to make health care decisions for you, except to the extent that there are limits provided by law.)

In exercising the authority under this durable power of attorney for health care, my agent shall act consistently with my desires as stated below and is subject to the special provisions and limitations stated below:

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(You may attach additional pages if you need more space to complete your statement.)

**5. INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY PHYSICAL OR MENTAL HEALTH.** Subject to any limitations in this document, my agent has the power and authority to do all of the following:

(a) Request, review, and receive any information, verbal or written, regarding my physical or mental health, including, but not limited to, medical and hospital records.

(b) Execute on my behalf any releases or other documents that may be required in order to obtain this information.

(c) Consent to the disclosure of this information.

(If you want to limit the authority of your agent to receive and disclose information relating to your health, you must state the limitations in paragraph 4 ("Statement of Desires, Special Provisions, and Limitations") above.)

**6. SIGNING DOCUMENTS, WAIVERS, AND RELEASES.** Where necessary to implement the health care decisions that my agent is authorized by this document to make, my agent has the power and authority to execute on my behalf all of the following:

(a) Documents titled or purporting to be a "Refusal to Permit Treatment" and "Leaving Hospital Against Medical Advice."

(b) Any necessary waiver or release from liability required by a hospital or physician.

**7. UNIFORM ANATOMICAL GIFT ACT.** Subject to any limitations in this document, my agent has the power and authority to make a disposition of a part or parts of my body under the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code).

(If you want to limit the authority of your agent to make a disposition under the Uniform Anatomical Gift Act, you must state the limitations in paragraph 4 ("Statement of Desires, Special Provisions, and Limitations") above.)

**8. DURATION.**

(Unless you specify a shorter period in the space below, this power of attorney will exist for seven years from the date you execute this

document and, if you are unable to make health care decisions for yourself at the time when this seven-year period ends, the power will continue to exist until the time when you become able to make health care decisions for yourself.)

This durable power of attorney for health care expires on \_\_\_\_\_

(Fill in this space ONLY if you want the authority of your agent to end EARLIER than the seven-year period described above.)

### 9. DESIGNATION OF ALTERNATE AGENTS.

(You are not required to designate any alternate agents but you may do so. Any alternate agent you designate will be able to make the same health care decisions as the agent you designated in paragraph 1, above, in the event that agent is unable or unwilling to act as your agent. Also, if the agent you designated in paragraph 1 is your spouse, his or her designation as your agent is automatically revoked by law if your marriage is dissolved.)

If the person designated as my agent in paragraph 1 is not available and willing to make a health care decision for me, then I designate and appoint the following persons to serve as my agent to make health care decisions for me as authorized in this document, such persons to serve in the order listed below:

A. First Alternate Agent \_\_\_\_\_

(Insert name, address, and telephone number of first alternate agent)

B. Second Alternate Agent \_\_\_\_\_

(Insert name, address, and telephone number of second alternate agent)

### 10. NOMINATION OF CONSERVATOR OF PERSON.

(A conservator of the person may be appointed for you if a court decides that one should be appointed. The conservator is responsible for your physical care, which under some circumstances includes making health care decisions for you. You are not required to nominate a conservator but you may do so. The court will appoint the person you nominate unless that would be contrary to your best

interests. You may, but are not required to, nominate as your conservator the same person you named in paragraph 1 as your health care agent. You can nominate an individual as your conservator by completing the space below.)

If a conservator of the person is to be appointed for me, I nominate the following individual to serve as conservator of the person \_\_\_\_\_

(Insert name and address of person nominated as conservator of the person)

**11. PRIOR DESIGNATIONS REVOKED.** I revoke any prior durable power of attorney for health care.

**DATE AND SIGNATURE OF PRINCIPAL**  
(YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY)

I sign my name to this Statutory Form Durable Power of Attorney for Health Care on \_\_\_\_\_ at  
(Date)

\_\_\_\_\_,  
(City)

\_\_\_\_\_,  
(State)

\_\_\_\_\_  
(You sign here)

(THIS POWER OF ATTORNEY WILL NOT BE VALID UNLESS IT IS EITHER (1) ACKNOWLEDGED BEFORE A NOTARY PUBLIC IN CALIFORNIA OR (2) SIGNED BY TWO QUALIFIED WITNESSES WHO PERSONALLY KNOW YOU AND ARE PRESENT WHEN YOU SIGN OR ACKNOWLEDGE YOUR SIGNATURE.)

## CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

(You may use acknowledgment before a notary public instead of the statement of witnesses.)

State of California        }  
County of \_\_\_\_\_ } ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_,  
before me, \_\_\_\_\_,  
(Insert name of notary public)

personally appeared \_\_\_\_\_,  
(Insert name of principal)

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed it. I declare under penalty of perjury that the person whose name is subscribed to this instrument appears to be of sound mind and under no duress, fraud, or undue influence.

NOTARY SEAL

\_\_\_\_\_  
(Signature of Notary Public)

### STATEMENT OF WITNESSES

(If you elect to use witnesses instead of having this document notarized, you must use two qualified adult witnesses. None of the following may be used as a witness: (1) a person you designate as your agent or alternate agent, (2) a health care provider, (3) an employee of a health care provider, (4) the operator of a community care facility, (5) an employee of an operator of a community health care facility. At least one of the witnesses must make the additional declaration set out following the place where the witnesses sign.)

I declare under penalty of perjury under the laws of California that the principal is personally known to me, that the principal signed or acknowledged this durable power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as attorney-in-fact by this document, and that I am not a health care provider, an employee of a health care

provider, the operator of a community care facility, nor an employee of an operator of a community care facility.

Signature: \_\_\_\_\_ Residence Address: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Residence Address: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_

(AT LEAST ONE OF THE ABOVE WITNESSES MUST ALSO SIGN THE FOLLOWING DECLARATION.)

I further declare under penalty of perjury under the laws of California that I am not related to the principal by blood, marriage, or adoption, and, to the best of my knowledge, I am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law.

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

### STATEMENT OF PATIENT ADVOCATE OR OMBUDSMAN

(If you are a patient in a skilled nursing facility, one of the witnesses must be a patient advocate or ombudsman. The following statement is required only if you are a patient in a skilled nursing facility--a health care facility that provides the following basic services: skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. The patient advocate or ombudsman must sign both parts of the "Statement of Witnesses" above AND must also sign the following statement.)

I further declare under penalty of perjury under the laws of California that I am a patient advocate or ombudsman as designated by the State Department of

**Aging and that I am serving as a witness as required by subdivision (f) of Section 2432 of the Civil Code.**

**Signature:** \_\_\_\_\_

**Comment.** Section 2500 is consistent with and subject to the substantive law applicable to a durable power of attorney for health care. See Sections 2410-2423 (court review), 2430-2443 (durable power of attorney for health care). However, in the statutory form durable power of attorney for health care, the "warning" set out in Section 2500 replaces the one set out in Section 2433. See also Section 2501. The last sentence of the fifth paragraph of the "warning" recognizes the authority given the court by Section 2412.5.

**§ 2501. Form must contain "warning" or lawyer's certificate**

**2501. (a)** Notwithstanding Section 2433, except as provided in subdivision (b), a statutory form durable power of attorney for health care, to be valid, shall contain, in not less than 10-point bold-face type or a reasonable equivalent thereof, the warning statement which is printed in capital letters at the beginning of Section 2500.

**(b)** Subdivision (a) does not apply if the statutory form durable power of attorney for health care contains a certificate signed by the principal's lawyer stating in substance: "I am a lawyer authorized to practice law in the state where this power of attorney was executed, and the principal was my client at the time when this power of attorney was executed. I have advised my client concerning his or her rights in connection with this power of attorney and the applicable law and the consequences of signing or not signing this power of attorney, and my client, after being so advised, has executed this power of attorney."

**Comment.** Section 2501 makes invalid a statutory form durable power of attorney for health care that does not contain the warning or, in lieu of the warning, a lawyer's certificate. The warning set out in Section 2500 must be used in the statutory form instead of the warning set out in Section 2433.

**§ 2502. Formal requirements**

**2502.** (a) A statutory form durable power of attorney for health care is valid only if it contains the date of its execution and is signed by the principal and one or both of the following requirements are satisfied:

(1) It is acknowledged by the principal before a notary public at any place within this state, and the notary public executes the certificate in the form set out in Section 2500.

(2) It is signed by two qualified witnesses, each of whom executes, under penalty of perjury, the declaration set out in the first paragraph of the "Statement of Witnesses" in the form set out in Section 2500 and one of whom also executes the declaration under penalty of perjury set out in the second paragraph of the "Statement of Witnesses" in the form set out in Section 2500.

(b) Nothing in this section excuses compliance with the special requirements imposed by subdivisions (c) and (f) of Section 2432.

**Comment.** Section 2502 is consistent with Section 2432. To be valid a statutory form durable power of attorney for health care must satisfy the requirements of both Section 2501 and Section 2502.

**§ 2503. Requirements for power of attorney to be a statutory form durable power of attorney for health care**

**2503.** (a) Subject to subdivision (b), a power of attorney is a "statutory form durable power of attorney for health care," as this phrase is used in this chapter, if it meets both of the following requirements:

(1) It meets the requirements of Sections 2501 and 2502.

(2) It contains the exact wording of paragraphs 1, 2, and 3 of the form set out in Section 2500.

(b) A statutory form durable power of attorney for health care may contain one or more or all of paragraphs 4 to 11, inclusive, of the form set out in Section 2500.

(c) A power of attorney is not prevented from being a "statutory form durable power of attorney for health

care,” as this phrase is used in this chapter, by the fact that it contains a printed statement as a part of paragraph 4 (“Statement of Desires, Special Provisions, and Limitations”) of the form set out in Section 2500.

**Comment.** Section 2503 permits the development of a printed statutory form that omits portions of the form set out in Section 2500, such as, for example, the paragraph on “Duration.” Section 2503 also permits development of a printed statutory form that includes printed statements of desires, special provisions, and limitations in the form set out in Section 2500, such as, for example, a statement that the health care agent is to confer with specified members of the principal’s family who are reasonably available before making specified health care decisions or a statement that the health care agent is authorized and directed to arrange for health care of the principal by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner thereof. The statutory form can also include a printed statement of the principal’s desires concerning life-prolonging care, treatment, services, and procedures. The statements of desires, special provisions, and limitations—whether or not printed—are, of course, subject to the provisions of Article 5 (commencing with Section 2430) of Chapter 2. See the introductory clause of Section 2500.

**§ 2504. Right of health care agent to select and discharge health care professionals**

**2504.** In a statutory form durable power of attorney for health care, the language conferring general authority with respect to “health care decisions” authorizes the attorney-in-fact to select and discharge physicians, dentists, nurses, therapists, and other health care professionals as the attorney-in-fact determines necessary to carry out the health care decisions the attorney-in-fact is authorized by the power of attorney to make.

**Comment.** Section 2504 makes clear that the health care agent has authority to select and discharge health care professionals.

**§ 2505. Effect of documents executed by agent on behalf of principal**

**2505.** If a document described in paragraph 5 or 6 of the form set out in Section 2500 is executed on behalf of the principal by the attorney-in-fact in the exercise of authority granted to the attorney-in-fact by paragraph 5 or 6 of the form set out in Section 2500, the document has the same effect as if the principal had executed the document at the same time and under the same circumstances and had the capacity to execute the document at that time.

**Comment.** Section 2505 makes clear that documents executed by the agent pursuant to authority given in the statutory form durable power of attorney for health care have the same effect as if executed by a competent principal at the same time and under the same circumstances.

**§ 2506. Right to use other power of attorney**

**2506.** Nothing in this chapter affects or limits the use of any other form for a durable power of attorney for health care.

**Comment.** Section 2506 makes clear that a person may use a durable power of attorney for health care that is not a statutory form durable power of attorney for health care under this chapter. The other durable power of attorney for health care—whether a printed form or a specially drafted document—must, of course, comply with the requirements of Sections 2430-2443 and is subject to the provisions of those sections.

**Transitional provision**

**SEC. 5.** The amendments of Sections 2421 and 2433 of the Civil Code made by this act apply only to a power of attorney executed on or after January 1, 1985, and do not affect the validity of a power of attorney executed prior to that date.

## CONFORMING AMENDMENTS TO NATURAL DEATH ACT

**An act to amend Sections 7188 and 7189.5 of the Health and Safety Code, relating to health.**

*The people of the State of California do enact as follows:*

Health & Safety Code § 7188 (amended). Directive to physicians

**SECTION 1. Section 7188 of the Health and Safety Code is amended to read:**

**7188. Any adult person may execute a directive directing the withholding or withdrawal of life-sustaining procedures in a terminal condition. The directive shall be signed by the declarant in the presence of two witnesses not related to the declarant by blood or marriage and who would not be entitled to any portion of the estate of the declarant upon his decease under any will of the declarant or codicil thereto then existing or, at the time of the directive, by operation of law then existing. In addition, a witness to a directive shall not be the attending physician, an employee of the attending physician or a health facility in which the declarant is a patient, or any person who has a claim against any portion of the estate of the declarant upon his decease at the time of the execution of the directive. The directive shall be in the following form:**

### DIRECTIVE TO PHYSICIANS

Directive made this \_\_\_\_\_ day of \_\_\_\_\_ (month, year).

I \_\_\_\_\_, being of sound mind, willfully, and voluntarily make known my desire that my life shall not be artificially prolonged under the circumstances set forth below, do hereby declare:

1. If at any time I should have an incurable injury, disease, or illness certified to be a terminal condition by two physicians, and where the application of

life-sustaining procedures would serve only to artificially prolong the moment of my death and where my physician determines that my death is imminent whether or not life-sustaining procedures are utilized, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally.

2. In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this directive shall be honored by my family and physician (s) as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from such refusal.

3. If I have been diagnosed as pregnant and that diagnosis is known to my physician, this directive shall have no force or effect during the course of my pregnancy.

4. I have been diagnosed and notified at least 14 days ago as having a terminal condition by \_\_\_\_\_, M.D., whose address is \_\_\_\_\_, and whose telephone number is \_\_\_\_\_. I understand that if I have not filled in the physician's name and address, it shall be presumed that I did not have a terminal condition when I made out this directive.

5. This directive shall have no force or effect ~~five~~ **seven** years from the date filled in above.

6. I understand the full import of this directive and I am emotionally and mentally competent to make this directive.

Signed \_\_\_\_\_

City, County and State of Residence \_\_\_\_\_

The declarant has been personally known to me and I believe him or her to be of sound mind.

Witness \_\_\_\_\_

Witness \_\_\_\_\_

**Comment.** Section 7188 is amended to adopt the seven-year period of duration provided for a durable power of attorney for health care. See Civil Code § 2436.5. Conforming the period of existence of the directive to physicians and the durable power

will make it less likely that the need to execute new documents will be overlooked.

**Health & Safety Code § 7189.5 (amended). Time directive remains in effect**

**SEC. 2. Section 7189.5 of the Health and Safety Code is amended to read:**

**7189.5. A directive shall be effective for ~~five~~ seven years from the date of execution thereof unless sooner revoked in a manner prescribed in Section 7189. Nothing in this chapter shall be construed to prevent a declarant from reexecuting a directive at any time in accordance with the formalities of Section 7188, including reexecution subsequent to a diagnosis of a terminal condition. If the declarant has executed more than one directive, such time shall be determined from the date of execution of the last directive known to the attending physician. If the declarant becomes comatose or is rendered incapable of communicating with the attending physician, the directive shall remain in effect for the duration of the comatose condition or until such time as the declarant's condition renders him or her able to communicate with the attending physician.**

**Comment.** See the Comment to Section 7188.

**Transitional provision**

**SEC. 3. The amendments to Sections 7188 and 7189.5 of the Health and Safety Code by this act apply only if the directive executed by the declarant pursuant to Section 7188 of the Health and Safety Code includes the statement: "This directive shall have no force or effect seven years from the date filled in above." If the directive does not have that statement, the period of effectiveness of the directive is determined by Section 7189.5 of the Health and Safety Code as that section read immediately prior to its amendment by this act.**



**EXHIBIT 1**  
**STATUTORY SHORT FORM POWER OF**  
**ATTORNEY**

(California Civil Code Section 2450)

**WARNING.** It may be in your best interest to consult with a California lawyer because the powers granted by this document are broad and sweeping. They are defined in Sections 2460 to 2473, inclusive, of the California Civil Code.

The powers granted by this document will exist for an indefinite period of time unless you limit their duration in this document. These powers will continue to exist notwithstanding your subsequent disability or incapacity unless you indicate otherwise in this document.

This document must be notarized to be valid.

You have the right to revoke or terminate this power of attorney.

You are not required to use this form; you may use a different power of attorney if that is desired by the parties concerned.

If there is anything about this form that you do not understand, you should ask a lawyer to explain it to you.

1. **Designation of Agent.** I, \_\_\_\_\_

\_\_\_\_\_  
(Insert your name and address)

do hereby appoint \_\_\_\_\_

\_\_\_\_\_  
(Insert name and address of your agent, or each agent  
if you want to designate more than one)

as my attorney(s)-in-fact (agent) to act for me and in my name as authorized in this document.

**2. Creation of Durable Power of Attorney.** By this document I intend to create a general power of attorney under Sections 2450 to 2473, inclusive, of the California Civil Code. Subject to any limitations in this document, this power of attorney is a durable power of attorney and shall not be affected by my subsequent incapacity.

(If you want this power of attorney to terminate automatically when you lack capacity, you must so state in paragraph 4 ("Special Provisions and Limitations") below.)

**3. Statement of Authority Granted.** Subject to any limitations in this document, I hereby grant to my agent(s) full power and authority to act for me and in my name, in any way which I myself could act, if I were personally present and able to act, with respect to the following matters as each of them is defined in Chapter 3 (commencing with Section 2450) of Title 9 of Part 4 of Division 3 of the California Civil Code to the extent that I am permitted by law to act through an agent:

- (1) Real estate transactions.
- (2) Tangible personal property transactions.
- (3) Bond, share, and commodity transactions.
- (4) Banking transactions.
- (5) Business operating transactions.
- (6) Insurance transactions.
- (7) Retirement plan transactions.
- (8) Estate transactions.
- (9) Claims and litigation.
- (10) Tax matters.
- (11) Personal relationships and affairs.
- (12) Benefits from military service.
- (13) Records, reports, and statements.
- (14) Full and unqualified authority to my agent(s) to delegate any or all of the foregoing powers to any person or persons whom my agent(s) shall select.
- (15) All other matters.

(Strike out any one or more of the items above to which you do NOT desire to give your agent authority. Such elimination of any one or more of items (1) to (14), inclusive, automatically constitutes an elimination of item (15). TO STRIKE OUT AN ITEM, YOU MUST DRAW A LINE THROUGH THE TEXT OF THAT ITEM.)

**4. Special Provisions and Limitations.** In exercising the authority under this power of attorney, my agent(s) is subject to the following special provisions and limitations:

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(Special provisions and limitations may be included in the statutory short form power of attorney only if they conform to the requirements of Section 2455 of the California Civil Code.)

**5. Exercise of Power of Attorney Where More Than One Agent Designated.** If I have designated more than one agent, the agents are to act \_\_\_\_\_.

(If you designate more than one agent and wish each agent alone to be able to exercise this power, insert in this blank the word "severally." Failure to make an insertion or the insertion of the word "jointly" will require that the agents act jointly.)

**6. Nomination of Conservator of Estate.**

(A conservator of the estate may be appointed for you if a court decides that one should be appointed. The conservator is responsible for the management of your financial affairs and your property. You are not required to nominate a conservator but you may do so. The court will appoint the person you nominate unless that would be contrary to your best interests. You may, but are not required to, nominate as your conservator the same person you named in paragraph 1 as your agent. You may nominate a person as your conservator by completing the space below.)

If a conservator of the estate is to be appointed for me, I nominate the following person to serve as conservator of the estate \_\_\_\_\_

(Insert name and address of person nominated as conservator of the estate)

**DATE AND SIGNATURE OF PRINCIPAL**

I sign my name to this Statutory Short Form Power of Attorney on \_\_\_\_\_

(Date) at \_\_\_\_\_, \_\_\_\_\_ (City) (State)

\_\_\_\_\_  
(You sign here)

**(THIS POWER OF ATTORNEY WILL NOT BE VALID UNLESS IT IS ACKNOWLEDGED BEFORE A NOTARY PUBLIC IN CALIFORNIA)**

**CERTIFICATE OF ACKNOWLEDGMENT OF  
NOTARY PUBLIC**

State of California }  
County of \_\_\_\_\_ } ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_,  
before me, \_\_\_\_\_,  
(Insert name of notary public)  
personally appeared \_\_\_\_\_,  
(Insert name of principal)

personally known to me (or proved to me on the basis of  
satisfactory evidence) to be the person whose name is  
subscribed to this instrument, and acknowledged that he or  
she executed it. I declare under penalty of perjury that the  
person whose name is subscribed to this instrument appears  
to be of sound mind and under no duress, fraud, or undue  
influence.

**NOTARY SEAL**

\_\_\_\_\_  
(Signature of Notary Public)

**EXHIBIT 2**  
**STATUTORY FORM DURABLE POWER OF**  
**ATTORNEY FOR HEALTH CARE**  
(California Civil Code Section 2500)

**WARNING TO PERSON EXECUTING THIS**  
**DOCUMENT**

**This is an important legal document. Before executing this document, you should know these important facts:**

**This document gives the person you designate as your agent (the attorney-in-fact) the power to make health care decisions for you. Your agent must act consistently with your desires as stated in this document or otherwise known. If your desires are unknown, your agent must make decisions that in the judgment of the agent are in your best interests.**

**Except as you otherwise specify in this document, this document gives your agent the power to consent to your doctor not giving treatment or stopping treatment necessary to keep you alive.**

**Notwithstanding this document, you have the right to make medical and other health care decisions for yourself so long as you can give informed consent with respect to the particular decision. In addition, no treatment may be given to you over your objection at the time, and health care necessary to keep you alive may not be stopped or withheld if you object at the time.**

**This document gives your agent authority to consent, to refuse to consent, or to withdraw consent to any care, treatment, service, or procedure to maintain, diagnose, or treat a physical or mental condition. This power is subject to any statement of your desires and any limitations that you include in this document. You may state in this document any types of treatment that you do not desire. In addition, a court can take away the power of your agent to make health care decisions for you if your agent (1) authorizes anything that is illegal, (2) acts contrary to your known desires, or (3) where your desires are not known, does anything that is clearly contrary to your best interests.**

Unless you specify a shorter period in this document, this power will exist for seven years from the date you execute this document and, if you are unable to make health care decisions for yourself at the time when this seven-year period ends, this power will continue to exist until the time when you become able to make health care decisions for yourself.

You have the right to revoke the authority of your agent by notifying your agent or your treating doctor, hospital, or other health care provider orally or in writing of the revocation.

Your agent has the right to examine your medical records and to consent to their disclosure unless you limit this right in this document.

This document revokes any prior durable power of attorney for health care.

You should carefully read and follow the witnessing procedure described at the end of this form. This document will not be valid unless you comply with the witnessing procedure.

If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

Your agent may need this document immediately in case of an emergency that requires a decision concerning your health care. Either keep this document where it is immediately available to your agent and alternate agents or give each of them an executed copy of this document. You may also want to give your doctor an executed copy of this document.

Do not use this form if you are a conservatee under the Lanterman-Petris-Short Act and you want to appoint your conservator as your agent. You can do that only if the appointment document includes a certificate of your attorney.

1. Designation of Health Care Agent. I, \_\_\_\_\_

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(Insert your name and address)

do hereby designate and appoint \_\_\_\_\_

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(Insert name, address, and telephone number of one individual only as your agent to make health care decisions for you. None of the following may be designated as agent:

(1) your treating health care provider, (2) an employee of your treating health care provider, (3) an operator of a community care facility, or (4) an employee of an operator of a community care facility.)

as my attorney-in-fact (agent) to make health care decisions for me as authorized in this document. For the purposes of this document, "health care decision" means consent, refusal of consent, or withdrawal of consent to any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition.

**2. Creation of Durable Power of Attorney for Health Care.** By this document I intend to create a durable power of attorney for health care under Sections 2430 to 2443, inclusive, of the California Civil Code. This power of attorney shall be construed in accordance with the provisions of Sections 2500 to 2503, inclusive, of the California Civil Code. This power of attorney shall not be affected by my subsequent incapacity.

**3. General Statement of Authority Granted.** Subject to any limitations in this document, I hereby grant to my agent full power and authority to make health care decisions for me to the same extent that I could make such decisions for myself if I had the capacity to do so. In exercising this authority, my agent shall make health care decisions that are consistent with my desires as stated in this document or otherwise made known to my agent, including, but not limited to, my desires concerning obtaining or refusing or withdrawing life-prolonging care, treatment, services, and procedures. If my desires are unknown or unclear, my agent shall make health care decisions for me that in the judgment of my agent are in my best interests.

(If you want to limit the authority of your agent to make health care decisions for you, you can state the limitations in paragraph 4 ("Statement of Desires, Special Provisions, and Limitations") below. You can indicate your desires by including a statement of your desires in the same paragraph.)

**4. Statement of Desires, Special Provisions, and Limitations.**

(Your agent must make health care decisions that are consistent with your known desires. You can, but are not required to, state your desires in the space provided below. You should consider whether you want to include a statement of your desires concerning life-prolonging care, treatment, services, and procedures. You can also include a

statement of your desires concerning other matters relating to your health care. You can also make your desires known to your agent by discussing your desires with your agent or by some other means. If there are any types of treatment that you do not want to be used, you should state them in the space below. If you want to limit in any other way the authority given your agent by this document, you should state the limits in the space below. If you do not state any limits, your agent will have broad powers to make health care decisions for you, except to the extent that there are limits provided by law.)

In exercising the authority under this durable power of attorney for health care, my agent shall act consistently with my desires as stated below and is subject to the special provisions and limitations stated below:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(You may attach additional pages if you need more space to complete your statement.)

**5. Inspection and Disclosure of Information Relating to my Physical or Mental Health.** Subject to any limitations in this document, my agent has the power and authority to do all of the following:

(a) Request, review, and receive any information, verbal or written, regarding my physical or mental health, including, but not limited to, medical and hospital records.

(b) Execute on my behalf any releases or other documents that may be required in order to obtain this information.

(c) Consent to the disclosure of this information.

(If you want to limit the authority of your agent to receive and disclose information relating to your health, you must state the limitations in paragraph 4 ("Statement of Desires, Special Provisions, and Limitations") above.)

**6. Signing Documents, Waivers, and Releases.** Where necessary to implement the health care decisions that my agent is authorized by this document to make, my agent has the power and authority to execute on my behalf all of the following:

(a) Documents titled or purporting to be a "Refusal to Permit Treatment" and "Leaving Hospital Against Medical Advice."

(b) Any necessary waiver or release from liability required by a hospital or physician.

**7. Uniform Anatomical Gift Act.** Subject to any limitations on this document, my agent has the power and authority to make a disposition of a part or parts of my body under the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code).

(If you want to limit the authority of your agent to make a disposition under the Uniform Anatomical Gift Act, you must state the limitations in paragraph 4 ("Statement of Desires, Special Provisions, and Limitations") above.)

### **8. Duration.**

(Unless you specify a shorter period in the space below, this power of attorney will exist for seven years from the date you execute this document and, if you are unable to make health care decisions for yourself at the time when this seven-year period ends, the power will continue to exist until the time when you become able to make health care decisions for yourself.)

This durable power of attorney for health care expires on

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(Fill in this space ONLY if you want the authority of your agent to end EARLIER than the seven-year period described above.)

### **9. Designation of Alternate Agents.**

(You are not required to designate any alternate agents but may do so. Any alternate agent you designate will be able to make the same health care decisions as the agent you designated in paragraph 1, above, in the event that agent is unable or unwilling to act as your agent. Also, if the agent you designated in paragraph 1 is your spouse, his or her designation as your agent is automatically revoked by law if your marriage is dissolved.)

If the person designated as my agent in paragraph 1 is not available and willing to make a health care decision for me, then I designate and appoint the following persons to serve as my agent to make health care decisions for me as authorized in this document, such persons to serve in the order listed below:

A. First Alternate Agent \_\_\_\_\_

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(Insert name, address, and telephone number of first alternate agent)

B. Second Alternate Agent \_\_\_\_\_

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(Insert name, address, and telephone number of second alternate agent)

### 10. Nomination of Conservator of Person.

(A conservator of the person may be appointed for you if a court decides that one should be appointed. The conservator is responsible for your physical care, which under some circumstances includes making health care decisions for you. You are not required to nominate a conservator but you may do so. The court will appoint the person you nominate unless that would be contrary to your best interests. You may, but are not required to, nominate as your conservator the same person you named in paragraph 1 as your health care agent. You can nominate an individual as your conservator by completing the space below.)

If a conservator of the person is to be appointed for me, I nominate the following individual to serve as conservator of the person \_\_\_\_\_

\_\_\_\_\_  
(Insert name and address of person nominated as conservator of the person)

11. Prior Designations Revoked. I revoke any prior durable power of attorney for health care.

### DATE AND SIGNATURE OF PRINCIPAL (YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY)

I sign my name to this Statutory Form Durable Power of Attorney for Health Care on \_\_\_\_\_ at  
(Date)

\_\_\_\_\_,  
(City)

\_\_\_\_\_  
(State)

\_\_\_\_\_  
(You sign here)

**(THIS POWER OF ATTORNEY WILL NOT BE VALID UNLESS IT IS EITHER (1) ACKNOWLEDGED BEFORE A NOTARY PUBLIC IN CALIFORNIA OR (2) SIGNED BY TWO QUALIFIED WITNESSES WHO PERSONALLY KNOW YOU AND ARE PRESENT WHEN YOU SIGN OR ACKNOWLEDGE YOUR SIGNATURE.)**

# CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

(You may use acknowledgment before a notary public instead of the statement of witnesses.)

State of California }  
County of \_\_\_\_\_ } ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_,  
before me, \_\_\_\_\_,  
(Insert name of notary public)  
personally appeared \_\_\_\_\_,  
(Insert name of principal)

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed it. I declare under penalty of perjury that the person whose name is subscribed to this instrument appears to be of sound mind and under no duress, fraud, or undue influence.

## NOTARY SEAL

\_\_\_\_\_  
(Signature of Notary Public)

## STATEMENT OF WITNESSES

(If you elect to use witnesses instead of having this document notarized, you must use two qualified adult witnesses. None of the following may be used as a witness: (1) a person you designate as your agent or alternate agent, (2) a health care provider, (3) an employee of a health care provider, (4) the operator of a community care facility, (5) an employee of an operator of a community health care facility. At least one of the witnesses must make the additional declaration set out following the place where the witnesses sign.)

I declare under penalty of perjury under the laws of California that the principal is personally known to me, that the principal signed or acknowledged this durable power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as attorney-in-fact by this document, and that I am not a health care provider, an

employee of a health care provider, the operator of a community care facility, nor an employee of an operator of a community care facility.

Signature: \_\_\_\_\_ Residence Address: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Residence Address: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

**(AT LEAST ONE OF THE ABOVE WITNESSES MUST ALSO SIGN THE FOLLOWING DECLARATION.)**

I further declare under penalty of perjury under the laws of California that I am not related to the principal by blood, marriage, or adoption, and, to the best of my knowledge, I am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law.

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

**STATEMENT OF PATIENT ADVOCATE OR OMBUDSMAN**

(If you are a patient in a skilled nursing facility, one of the witnesses must be a patient advocate or ombudsman. The following statement is required only if you are a patient in a skilled nursing facility—a health care facility that provides the following basic services: skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. The patient advocate or ombudsman must sign both parts of the "Statement of Witnesses" above AND must also sign the following statement.)

I further declare under penalty of perjury under the laws of California that I am a patient advocate or ombudsman as designated by the State Department of Aging and that I am serving as a witness as required by subdivision (f) of Section 2432 of the Civil Code.

Signature: \_\_\_\_\_